

State of Rajasthan

Vs

Pabudan Singh and Lachhman Singh

Criminal Appeal No. 151 of 1974

(Y.V. Chandrachud, V.R. Krishna Iyer JJ)

08.03.1976

JUDGMENT

CHANDRACHUD, J. -

1. The respondents were convicted by the Additional Sessions Judge, Merta, under Section 302 of the Penal Code and were sentenced to imprisonment for life. The order of conviction and sentence having been set aside by the High Court of Rajasthan, the State Government has filed this appeal by special leave.

2. The incident out of which these proceedings arise took place on the night of July 2, 1968 in a village called Jeesa. The deceased Ramsingh had gone on the evening of the 2nd for supplying milk to a customer and since he did not return for too long. His wife Sugan Kanwar, asked Bhabhoota Ram and Aduram (PWs 1 and 11) to find out why Ramsingh had not returned. It is alleged that, while on their way, these two persons saw the respondents committing the murder of Ramsingh.

3. The charge of murder levelled against the respondents can be sustained only if the testimony of Bhabhoota Ram and Aduram is safe to accept. The learned Additional Sessions Judge was not impressed by the evidence of Aduram and for a good reason. The witness had contract in both of his eyes and the moonlight, howsoever clear, could not have helped him to see what, physically, he was incapable of seeing. We are thus left with the evidence of Bhabhoota Ram only.

4. Bhabhoota Ram and Aduram went immediately after the occurrence to lodge the first information report. Whereas that report says that one of the two respondents was armed with a pharsa, Bhabhoota Ram, finding that Ramsingh had not received any incised injury said in the Sessions Court that both the respondents were armed with lathis. Evidence in the case shows that between the spot from where Bhabhoota Ram is alleged to have seen the murder and the place of occurrence, there was a high fence which would obstruct the witness's view of the incident. In fact, we share the doubt expressed by the High Court as to whether the incident at all took place before the setting of the moon at about 11 p.m. The two eyewitnesses gave different versions at different times and said at one stage that they were not sure whether the incident took place before or after midnight. If the incident took place after midnight they could not have identified the assailants from the place where they were standing. Bhabhoota Ram had stated before the committing Magistrate that Ramsingh's assailants had never come face to face with him. It is also significant that though Prabhu was one of the earliest to meet Bhabhoota Ram after the murder of Ramsingh, Bhabhoota Ram did not tell Prabhu that he was a witness to the murder. Sugna, the brother of Bhabhoota Ram, who was examined as a defence witness, stated that though Prabhu and Aduram told him at about midnight that Ramsingh was murdered, they were unable to give any further details of the incident. Sugna asked them as to

who had committed the murder and they said that they did not know. These circumstances render it unsafe to rely on the evidence of Bhabhoota Ram.

5. In the result, the order of acquittal passed by the High Court is confirmed and the appeal dismissed.

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