

SUPREME COURT OF INDIA

State of U.P.

Vs.

Buddha

Crl.A.No.287 of 1975

(P. N. Bhagwati and A. C. Gupta, JJ.)

24.09.1976

JUDGEMENT

GUPTA, J.:-

1. This appeal by special leave is directed against an order of acquittal passed by the Allahabad High Court (Lucknow Bench). The two respondents were convicted under Section 302/34 of the Indian Penal Code and were sentenced to death by the Additional Sessions Judge, Lucknow, for the murder of two brothers, Chandrika and Sita Ram, on the night between 26th and 27th of April, 1971 in village Barkhurdarpur, police station Chinhat, district Lucknow. The Additional Sessions Judge described this as a case of "could blooded revolting double murder". The High Court has acquitted both the accused giving them the benefit of doubt. The appellant, State of Uttar Pradesh, seeks to have the acquittal set aside.

2. The trial Court relied on the three eye-witnesses. P. W. 2 Ram Lal father of the victims, P. W. 3 Buddha Pasi and P. W. 7 Bhellar. All the three claimed to have seen the respondents clearly in the light of the torches they were carrying. The trial Court found that there was "no direct or indirect

suggestion" that either P. W. 3 or P. W. 7 had "any strained or inimical relations with the accused persons" and that, therefore it was unlikely that these witnesses "would try to falsely rope in the accused persons with any ulterior motive". It was further found that there was "no real conflict between the medical evidence and the oral evidence", as sought to be made out on behalf of the accused so far as the injuries on the person of one of the victims. The trial Court also noted that there were "certain minor contradictions in the testimony of the witnesses" regarding the manner of "use of the weapons by the assailants", but did not consider them to be of much significance.

3. The High Court did not find it possible to rely on the evidence of P. W. 2 Ram Lal. Referring to the points of difference in Ram Lal's statements before the committing Magistrate and in the Sessions Court as regards the motive for the crime, the High Court took the view that the motives suggested by Ram Lal were "fabricated" by him to strengthen the case against the respondents. The acquittal ordered by the High Court proceeds mainly on a suspicion that the story of the witnesses carrying torches with them was not true and there was not sufficient light for them to identify the assailants. Admittedly it was a dark moonless night. What made the learned Judges of the High Court suspect that the witnesses did not have any torch was the statement made by one Gajodhar before the committing Magistrate. Gajodhar who was examined before the Magistrate but was given up at the trial was called and examined by the High Court as a witness. Before the High Court he said that he saw the occurrence in the light of the torches which P. W. 2, P. W. 3 and P. W. 7 were flashing. He added that a lantern was brought later by the villagers. To a question put by the court as to whether the lantern was "sent for so that the injuries might be seen", he replied "there was no point in sending for a lantern when there were so many torches there". The witness was then confronted with his statement before the committing Magistrate.

"The lantern had been sent for in order to provide light. I had seen the injuries of Chandrika and Sita Ram. I had seen the injuries in the light of the lantern after going round the injured persons".

It is mainly from this that the High Court concluded that "possibly there was no torch light." Another circumstance which weighed with the High Court was that the account of the assault given by the eye-witnesses that Chandrika was attacked first and after the assailants had finished with him they turned on the other victim Sita Ram. According to the High Court it was not believable that Sita Ram, a child aged about 12 only, would keep on standing waiting for his turn to be assaulted. It does not appear from the impugned judgment that the High Court found any material discrepancy in the evidence of P. W. 3 and P. W. 4.

4. It seems to us that the fact that Gajodhar inspected the injuries with the aid of a lantern does not necessarily rule out the possibility of some of the witnesses having torches with them. The discussion of this aspect of the case in the Judgment of the High Court contains nothing to suggest that P. W. 2, P. W. 3 and P. W. 7 were likely in the circumstances to assist Gajodhar by flashing their torches. Regarding the other circumstance on which the High Court's decision is based, it is in evidence that the assailants finished with Chandrika in a minute or a minute and a half; we do not

consider it so very improbable for his 12 year old younger brother to keep standing there for these fleeting moments shouting for help to save his brother's life. We do not find in the High Court's Judgment any discussion of the positive evidence relating to the occurrence. Nothing is said as to why p. W. 3 or P. W. 7 should not be believed. The findings recorded by the High Court appear to be much too speculative and could hardly be called legitimate inferences from the evidence on record. For these reasons we are of the view that the case in the High Court has not been disposed of according to law. We should not be understood as expressing any opinion on the evidence either way; what we have said above was to point out that the High Court reached its conclusion without taking into consideration all the relevant evidence and circumstances of the case.

5. Accordingly we allow this appeal, set aside the impugned Judgment and send the matter back to the High Court. The High Court will hear afresh the appeal preferred by the accused and the reference under Sec. 374 of the Code of Criminal Procedure, 1898 and dispose of the same in accordance with law as expeditiously as possible. The High Court will come to its own conclusion on the evidence unfettered by anything we have said here.

Appeal allowed.