

State of Uttar Pradesh

Vs

Babboo and Others

Criminal Appeal No. 166 of 1973

(Syed M. Fazal Ali, P. N. Shinghal JJ)

03.02.1978

JUDGMENT

SHINGHAL, J. -

1. This appeal by special leave is directed against the judgement of the Allahabad High Court dated October 4, 1972 by which the conviction of respondents Babboo, Ram Prakash and Purushottam under Sections 302/34, IPC and the sentence of imprisonment for life have been set aside they have been acquitted. It has reported by Superintendent Jail, Bareilly, that respondent Babboo died in civil hospital, Aligarh, on August, 19, 1975 and the appeal has abated as against him.

2. Tulsi Prasad (PW 1) and his son Chandrapal (deceased) were residents of village Nagla Nai, at a distance of about four furlongs from police station Hathras, in Aligarh district. It is alleged that Chandrapal, who was about 18 or 19 years old, went towards his plot on the eastern side of the village 'abadi' on July 26, 1968, at about 9 p.m. The respondents were also there at that time, and there were two other persons who had muffled their faces. It is alleged that there was some altercation between the respondents and the deceased. Respondent Ram Prakash caught hold of the deceased and dragged him towards a lamp post on the road near which the altercation took place. The deceased however managed to get himself released from Ram Prakash's hold and ran towards Hathras. He was chased by the respondent and was assaulted with knives by Ram Prakash and Purushottam. The deceased again managed to run away, but he was again chased by the respondents. He was caught by the waist by respondent Babboo near another lamp post, and the other respondents again gave knife blows to him. It is alleged that Chandrapal fell down as a result of those injuries and died instantaneously. His shouts attracted the attention of the people in the neighbour-hood, and it is alleged that the incident was seen by Tikam Chand (PW 2), Dal Chand (PW 3), Nathi Lal (PW 4) and Narayan (PW 5). The respondents however managed to run away although they were chased by the witnesses for some time. A number of other villagers also arrived at the place of the occurrence, along with Chandrapal's father Tulsi Prasad (PW 1). A written report (Ex. Ka 1) was lodged by Tulsi Prasad at the police station at 10.30 p.m. The names of all the three respondents and the eye-witnesses were mentioned in that report. The police took up the investigation and sent the dead for post mortem examination. Dr. B. P. Kacker (PW 10) performed the examination and found the following injuries, -

1. Incised wound 3/4 inch x 1/2 inch x muscle deep on the left arm middle part inner side, oblique.
2. Incised wound 1-1/2 inch x 1/2 inch x muscle deep on the left arm middle side oblique.

3. Incised wound 1 inch x 1/2 x muscle deep 1/2 inch outer to injury No. 2.
4. Incised wound 1 inch x 1/2 x muscle deep on the left forearm side, oblique.
5. Incised wound 1 inch x 1/2 inch x muscle deep on the left forearm outer side on the upper third portion, oblique.
6. Punctured wound, with the ends out 1 inch x 1/2 inch x chest cavity deep, on the left side of the back, upper part, from scapular oblique.
7. Punctured wound, with ends out, 1-1/2 inches x 1/2 inch chest cavity deep on the left side of back, on the posterior fold of the axilla, below the axilla oblique.
8. Incised wound 1/2 inch x 1/2 inch x muscle deep on the left side of the back, lower part on the lumbar region.
9. Incised wound 1/2 inch x 1/4 inch x muscle deep on the left side of the abdomen 1 inch above the iliac spine oblique.

He found the following injuries on dissection of the dead body, -

- (a) The left pleura was punctured under external injuries Nos. 6 and 7, and contained about 3/4 inch pint of slightly congested blood.
- (b) The left lung was punctured on the outer side of the lower lobe and this hole was a wound measuring 3/4 inch in length and was in the entire thickness of the lobe.

The Medical Officer was of the opinion that death was caused due to shock and haemorrhage as a result of the injury to the lung. The injuries were, in his opinion, sufficient to cause death in the normal course of nature and could be caused by knives.

3. The prosecution examined Tikam Chand (PW 2), Dal Chand (PW 3) Nathi Lal (PW 4) and Narayan (PW 5) as eye witnesses of the incident. It also examined Babu Lal (PW 6) who stated that on hearing a noise he came out of his house and reached the place of occurrence. He saw the dead body of Chandrapal lying there, and he also found that Tikam Chand (PW 2) and Narayan (PW 5) and others were present at that time and they narrated the incident to him. The respondents denied the incident including the allegation of enmity with Tulsi Prasad, but did not lead any evidence in their defence. The Sessions Judge of Aligarh placed reliance on the evidence of the prosecution witnesses and convicted the respondents of the offence under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life as aforesaid. As the High Court has acquitted the respondents, the State has filed the present appeal.

4. While the trial judge had no hesitation in placing reliance on the statements of Tikam Chand (PW 2), Dal Chand (PW 3), Nathi Lal (PW 4), Narayan (PW 5) and Babu Lal (PW 6), the High Court has not believed their evidence and the question is whether any substantial illegality has been committed in arriving at that conclusion.

5. We find that the High Court has rejected the prosecution case mainly for the reason that, according to it, Tikam Chand (PW 2) and Dal Chand (PW 3) had stated that respondents Ram Prakash and Purushottam were standing to the right of the deceased when they caused injuries to

him while he was held by the waist by respondent Babboo, but the injuries were found by the medical officer to have been inflicted on the left side of Chandrapal's body. The High Court thought that "a perusal of injuries Nos. 2 and 3 would show that these injuries would not be possible if the assailants were standing in a position mentioned by these two witnesses". A reading of the statement of Tikam Chand (PW 2) shows, however, that he had stated that respondent Babboo held Chandrapal by the waist in such a way as to prevent him from moving his hands. So even if the assailants were on the right side of Chandrapal at the time of attacking him with knives, there was nothing to prevent them from giving him a number of blows on his left side. Dal Chand (PW 3) has stated much to the same effect. In fact he has clearly stated that respondent Babboo was holding Chandrapal from the right side when the remaining two respondents were assaulting him with knives from the right side. It therefore appears that as respondent Babboo was holding Chandrapal from right side, it was nothing unusual if most of the injuries were inflicted on the left side. Injury No. 2, to which reference has been made by the High Court was on the middle side, obliquely, of the left arm of the deceased, and injury No. 3 was "outer to injury No. 2". Those injuries could easily have been inflicted even if the assailant were on the right side. The High therefore misread the evidence in reaching the conclusion that these injuries would not have been possible if the assailants had been standing on the right side of the deceased. Moreover the High Court lost sight of the categorical statement of Dr. B. P. Kacker (PW 10) that those injuries were possible even if one person was holding the deceased from the right side and two others were attacking him while standing on his right side. We are surprised that even though Dr. Kacker's statement to this effect was brought to the notice of the High Court, it was rejected without assigning any reason merely on the hypothetical ground that, according to the learned Judges, a perusal of injuries Nos. 2 and 3 was sufficient to show that they could not be inflicted in the manner stated by the prosecution witnesses. The finding of the High Court is thus based on a clear misreading of the evidence on the record, and cannot be sustained. As that was the main reason why the High Court took the view that the statements of the two eye witnesses could not be relied upon, it follows that the evidence of the witnesses was wrongly rejected and the High Court fell into the error of thinking that it had to be "carefully sifted".

6. It is no wonder that because of the error in reading the evidence of the aforesaid two eye witnesses, the High Court fell into the other error of disbelieving them for the further reason that they belonged to the caste of the deceased and were his neighbours. Caste or neighbourhood cannot be reasons for disbelieving those who claim to be eye witnesses of the incident and the High Court fell into the error of thinking that it was necessary to look for corroboration for that reason.

7. The High Court has rejected the evidence of Tikam Chand (PW 2) for the further reason that his statement that he was sitting in the open at the shop of Mangia Nai did not inspire confidence. No reason has been given for taking that view, and it is therefore obvious that the other reason for rejecting the statement of Tikam Chand is clearly arbitrary.

8. As has been stated, Dal Chand (PW 3) and Nathi Lal (PW 4) were also examined as eye witnesses of the incident. The High Court distrusted the statement of Dal Chand because his duty hours were from 7 a.m. to 4 p.m. and he was not expected to be present at the place of occurrence at about 9 p.m. We find that what Dal Chand stated was that although his duty hours were upto 4 p.m. it was permissible for him to work beyond the normal working hours on contract basis. He even stated that there might be entries in the record of the mill about his working there upto 8.45 p.m. on the date of the incident. The trial Judge has examined this aspect of the matter, and has made a mention of the fact that even though the respondents took out "dasti" summons for obtaining the record of the mill for the purpose of showing that Dal Chand did not work there after 4 p.m., that evidence was not

ultimately produced for the purpose of contradicting his statement. The trial Judge therefore held that there was no reason to disbelieve the witness who, according to him, was able to withstand the test of cross-examination. It seems that the High Court did not notice these facts. As regards Nathi Lal (PW 4), we find that the High Court has disbelieved his evidence on the ground that even if he had to make some purchases, while returning from the "newar" factory at Hathras, it was unimaginable that he would take full three hours in making sundry purchases. An examination of the statement of the witness shows that he clearly stated that he left the factory at about 6 p.m. after finishing his work and that he took a detour to the market for the purpose of making some purchases before going to his village. The witness was however not asked how he spent three hours while taking that detour. There is therefore justification for the argument that his evidence was rejected on a mere conjecture.

9. The High Court has rejected the statement of Narayan (PW 5) on the ground that he could not explain why he happened to go towards the place of incident for easing himself. We have examined this reason also, and it will be sufficient to say that it has been considered by the trial Judge at length and has been rejected for satisfactory reasons based on the evidence on record.

10. It may also be mentioned that the High Court has taken the view that the persons who were examined as eye witnesses of the incident could not give any satisfactory explanation for their presence and were chance witnesses. In the same breath, the High Court has taken note of the fact that they were persons who were living in the neighbourhood. The witnesses have explained the circumstances in which they came to the place of the incident, and there is no evidence on the record to justify the High Courts conclusion that they were chance witnesses. It appears that the High Court realised the infirmity of its argument, and thought it necessary to reiterate its earlier view that the statements of the witnesses were unbelievable because the deceased could not have received the injuries if the assailants had been on his right side. As has been shown, we have not found it possible to accept that reasoning, and we have no doubt that it could not be used for the purpose of dubbing the witnesses as chance witnesses. They were persons living in the neighbourhood, and reached the place of occurrence in the circumstances mentioned by them.

11. The High Court has stated further that the murder was committed by someone stealthily, and that the residents of the locality would have come to the place of occurrence if an alarm had been raised at all. In taking that view the High Court however lost sight of the statement of Babu Lal (PW 6) that while he was at his house in the village, he heard a noise, came out of his house, and saw that a crowd including Tikam Chand (PW 2) and Narayan (PW 5) had assembled at the place of the incident and the two witnesses narrated the incident to him. The High Court also did not take note of the statement of Tikam Chand (PW 2) in which he clearly stated that he raised an alarm when he saw the respondents catching hold of the deceased and assaulting him. The High Court therefore again misread the evidence in not taking notice of all this evidence and in rejecting the prosecution evidence on a hypothetical ground.

12. The High Court has distrusted the prosecution evidence because Tulsi Prasad (PW 1) did not name the boy of his village who, according to him, first came and told him about the murder, and also because the alleged eye witnesses did not send a man to inform him of the murder. Tulsi Prasad has stated that he did not remember the name of the boy who gave him the information about the murder of his son and his statement could not be rejected merely because he did not name him in the first information report, or because the eye witnesses did not send a man to inform him of what had happened. On the other hand, we find that Tulsi Prasad did not try to fill the omission by naming the boy during the course of the trial.

13. Lastly, the High Court has rejected the prosecution evidence on the ground of enmity of Tulsi Prasad (PW 1) with the respondents because of their working against him at the election. Here again, the High Court has misread the evidence. As has been pointed out by the trial Judge, there were as many as 11 candidates at the municipal election, including Tulsi Prasad, Ram Babu Sharma and Babu Lal (PW 6). It was Babu Lal (PW 6) who came out successful, while the others were defeated. The result of the election could not therefore have given rise to enmity on the part of Tulsi Prasad against Ram Babu Sharma, and much less against his nephew respondent Ram Prakash who was alleged to have worked for Ram Babu Sharma at the election. The High Court also lost sight of the fact that it had been brought out in the cross-examination of Nathi Lal (PW 4) that a case under Section 107, Cr. P.C. had been started in which Tulsi Prasad and Ram Prakash's another uncle Jai Narain were arrayed on the one side, while the prosecution witnesses Nathi Lal, Dal Chand and Narayan were arrayed on the other side.

14. It would thus appear that the High Court has misread the evidence on the record in several important particulars, and it is no wonder that it has arrived at the incorrect conclusion that the statements of Tikam Chand (PW 2), Dal Chand(PW 3), Nathi Lal(PW 4) and Narayan (PW 5) were unreliable. We have gone through their statements and we are fully satisfied that the prosecution case has been fully established by the prosecution evidence, including the statement of Dr. B. P. Kacker (PW 10). As has been stated, the names of Tikam Chand, Dal Chand, Nathi Lal and Narayan were mentioned in the first information report soon after the incident and their testimony has not been shaken during the course of the cross-examination. The order of the Sessions Judge convicting the respondents of the offence under Sections 302/34, IPC was therefore correct and must be restored.

15. As has been stated, Dr. B. P. Kacker has stated that the injuries found on the dead body were sufficient in the normal of nature to cause the death of Chandrapal. Two of those injuries were punctured wounds which were chest cavity deep and the left pleura and the left lung had been punctured. The injury to the lung was in the entire thickness of the lower lobe, and there can be no doubt that the act by which the death was caused was done with the intention of causing bodily injury and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death within the meaning of Section 300, IPC.

16. The appeal is allowed, the impugned judgement of the High Court dated October 4, 1972 acquitting respondents Ram Prakash and Purushottam is set aside and they are convicted of the offence under Sections 302/34, IPC and sentenced to imprisonment for life. Respondent No. 2, Ram Prakash is on bail and shall surrender to undergo the sentence.

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