

State of U. P.

Vs

Hakim Singh and Others

Criminal Appeal No. 312 of 1974

(Syed M. Fazal Ali, A.P. Sen JJ)

12.10.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a Division Bench judgment of the Allahabad High Court dated October 10, 1973 setting aside the conviction and sentence imposed by the trial Court on the respondent and acquitting them of the charges framed against them. The leading judgment was delivered by D. S. Mathur, J. with whom Mohd. Hamid Hussain, J. concurred. The details of the prosecution case are to be found in the judgment of the High Court and that of the trial Court and it is not necessary to repeat the same all over again. We have heard counsel for the parties and have also perused the judgment and have been taken through the entire evidence. A perusal of the judgment clearly shows that the High Court has not dealt with the intrinsic merits of the evidence of the eyewitnesses, particularly of PWs 1 and 5, at all but has brushed aside their evidence of surmises and conjectures and preponderance of improbabilities which in fact did not exist. With very great respect to the Hon'ble judges we are constrained to observe that the judgment of the High Court, particularly that of D. S. Mathur, J., who spoke for the court, is not only in accordance not with law but it borders on perversity. It seems that the learned judges never made any real effort to appreciate or marshal the evidence in order to reach the conclusion regarding the credibility of the eyewitnesses, who had been examined, to prove the truth of the prosecution case. We have gone through the evidence of PWs 1 and 5 particularly in great detail and we find that their evidence is not only creditworthy but is natural and very straightforward and contains a ring of truth. One of the general grounds on which evidence of these two witnesses was rejected by the High Court was that these witnesses were partisan or interested witnesses. Being near relations and living practically in the same house, these witnesses cannot be said to be interested witnesses, but are very natural witnesses as held by this Court in the case of *Mst. Dalbir Kaur v. State of Punjab* ((1976) 4 SCC 158 : 1976 SCC (Cri) 527). Moreover, as the murder took place near about midnight inside the house we could not have expected witnesses from outside to see the occurrence. On a perusal of evidence of PWs 1 and 5, we are fully satisfied that these witnesses are stating the truth and have not concealed anything. We might also mention that although PW 1 was subjected to a gruelling and searching cross-examination yet nothing of importance was elicited from his evidence in order to shake his testimony. Furthermore, the evidence of PW 2 who was next door neighbour of PWs 1 and 5 corroborates their evidence and we see no reason to distrust his testimony.

2. Realising this situation, Mr. A. N. Mulla, learned counsel for the respondents, very fairly conceded that it was impossible for him in the state of the evidence to support the judgment of the High Court acquitting the accused. The High Court merely based its decisions on the facts that PWs 1 and 5 could not have identified the respondents. The evidence of PWs 1 and 5 clearly shows that a

burning lantern was hanging on the thatch of the house only a few yards from the courtyard where the accused had entered and thus there was sufficient light to enable PWs 1 and 5 to identify the assailant of the two deceased who were shot dead. PWs 1 and 5 were in the Barotha which was guarded by three unknown persons armed with guns and lathis but there is no evidence to show that accused guarding the entrance were standing in a straight line so as to block the view of PWs 1 to 5. Furthermore, much has been made by the High Court of the fact that Mt. Sudama who was also injured was not examined as a witness. If the evidence of PWs. 1 and 5 is believed it is not necessary to multiply witnesses to prove the case and thus non-examination of Mt. Sudama does not, in our opinion, cast any doubt on the prosecution case. In view, however, of the candid concession made by Mr. Mulla, we do not consider it necessary to go into further details. Mr. Mulla, however, confined his arguments to the question of sentence at the end. After a careful consideration of the entire evidence and the circumstances proved in this case, we are clearly of the opinion that the prosecution case against the appellants as found by the learned Sessions Judge, has been fully established beyond reasonable doubt. We are also of the opinion that no other reasonable view on the evidence could be possible than the one which was taken by the Sessions Court. We think that so far as arguments on the question of sentence are concerned, there is great substance in the same. Although this was a case of double murder, the appellants had been acquitted on October 10, 1973 and it will not be proper or expedient to impose the extreme penalty of death on respondents, as was done by the trial Court. We, therefore, allow the appeal and set aside the judgment of the High Court and restore of the Sessions Judge, with the modification that the respondent's Hawaldar, Zildar, and Ram Singh are convicted under Section 302/34 IPC for the murder of Amrit Sri and Lajja Ram and Hakim Singh for the murder of Tale Singh and each of them are sentenced to imprisonment for life. The other conviction and sentences imposed by the trial Court on these appellants are restored and maintained and the order of the High Court is set aside. The respondent 2 to 4 who are on bail will now surrender and serve out the remaining portion of the sentence.

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