

Juwarsingh S/O. Bheraji and Others

Vs

State of Madhya Pradesh

Criminal Appeal No. 79 of 1973

(O Chinnappa Reddy, R. S. Sarkaria JJ)

18.09.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. There are thirteen appellants before us in this appeal by special leave. They were convicted by the learned Second Additional Sessions Judge, Dhar, of offences under Sections, 148, 458, 323 read with Section 34 and Section 436 read with Section 34, Indian Penal Code and sentenced to suffer various terms of imprisonment ranging from six months to four years. An appeal preferred by the accused was dismissed by the High Court in a laconic and if we may say so, a perfunctory judgment without discussing the evidence except making one or two general observations.

2. The case of the prosecution was that on November 10, 1970, at about 8 p. m. Gita Bai (PW 1), wife of Gangaram, her two children, Janibai (PW 6), wife of Badri, brother of Gangaram, her two children, Gangaram's brothers Brijlal (PW 3), his wife Suhagbai and their children were in the house of Gangaram. Gangaram himself was not at home nor was Badri. Gita, Janibai and their children were in the ground floor while Brijlal, his wife and children were on the first floor. At about 8 p. m. the thirteen accused persons, one of whom is another brother of Gangaram, broke open the front door of the house, entered the house and inflicted some injuries on Gita and Janibai. Gita, Janibai and their children came out of the house. Brijlal, Suhagbai and their children also escaped from the house. The accused persons then spread hay in the house and sprinkled kerosene oil and set fire to the house. The house was burnt to ashes. Gita and Janibai went to the village Bidwal, and spent the night there as Gangaram was in that village. Brijlal who had sought shelter in the house of another brother Panna Lal who lived next door to Gangaram's house was asked by that brother to seek shelter elsewhere as there was every chance of the accused persons attacking his house also if they came to know that Brijlal was hiding there. So Brijlal also went to Bidwal. Next morning Gita, Janibai and Brijlal proceeded to the Police Station, Kanwan and gave a report to the Head Constable who was in charge of the station at about 11.30 a. m. In this report through ten to fifteen persons were alleged to have entered the house, broken upon the door and set fire to the house, the names of only A-1, A-2, A-3, A-4, A-10 and A-11 were mentioned. Gita and Janibai were sent to the hospital for treatment and it was found that each of them had a couple of simple injuries. The Sub-Inspector of Police, PW 7, who was on tour, returned to Kanwan and took over the investigation on November 12, 1970. He proceeded to Kod village, to the scene of occurrence, prepared a panchnama and thereafter recorded the statements of the witnesses. On completion of investigation the appellants were tried and convicted and sentenced as mentioned at the outset.

3. Shri A. N. Mulla, learned counsel for the appellants argued that the evidence of PWs 1, 2 and 6 should not be accepted as their cross-examination showed that they had prevaricated on several

points. He urged that the fire was due to an accident which was the result of the combustion of some explosive material which was kept in the house of Gangaram. He relied on the evidence of DWs 1 to 3 in support of his argument that an incident in which the thirteen accused person participated did not take place that night. He also submitted that the accused were prejudiced by the failure of the prosecution to furnish copies of the statements recorded by the police, on the 11th, immediately after the first information report was given. In any case it was submitted that the seven persons whose names were not mentioned in the first information report were entitled to an acquittal.

4. We have been taken through the evidence of PWs 1, 2 and 6 and we must say that in spite of the marathon cross examination to which the witnesses were subjected, nothing must was elicited except the circumstance that the names of seven of the thirteen accused persons were not mentioned in the first information report. In addition to naming seven persons more as accused than those mentioned in the first information report there were also some other improvements in the evidence but they were of a minor character. There cannot possibly be any doubt about the presence of PWs 1, 2 and 6 in the house on that night. PWs 1 and 6 also received some injuries though simple. The miscreants being people of their own village, they must have been well known to them and there would not have been any difficulty in identifying them. The first information report, in spite of the fact that it was given more than twelve hours after the incident is so restrained and free from exaggeration that we are much impressed by it. Only six of the accused persons have been mentioned by name. We do not see any trace of confabulation and fabrication in the document. We think that it would be absolutely safe to accept the evidence of PW 1 to the extent that it is absolutely safe to accept the evidence of PW 1 to the extent that it is corroborated by the first information report. The evidence of PWs 2 and 6 may also be safely accepted to that extent.

5. The accused examined three defence witnesses and one of them was Pannalal, brother of Gangaram. All of them stated that Gangaram's house was burnt down on the night of November 10, 1970 but that they did not see any of the accused person at the place and that no one prevented anyone from trying to extinguish the fire as was claimed by PWs 1, 2 and 6. Shri Mulla submitted that DWs 1, 2 and 3 were not subjected to any cross examination and therefore their evidence should be unhesitatingly accepted. We do not agree with the submission of Shri Mulla, Cross-examination is not the only method of discrediting a witness. If the oral testimony of certain witness is contrary to proved facts their evidence might well be discarded on that ground. If their testimony is on the face of it unacceptable, courts are not bound to accept their testimony merely because there was no cross examination. DWs 1 and 3 stated that the ladies of the family of Gangaram who were in the house at the time of the fire came out of the house and went away without saying anything. It is impossible to believe that the ladies of the house of Gangaram would have quietly come out of the house and walked away without saying anything. When their house had been set on fire. DW 3 is the brother of Gangaram and on his own showing he does not even appear to have offered any shelter to the ladies when they came out of the house. DW 2 went to the extent of saying that he did not see the ladies of the house of Gangaram at all that night. We do not think that the evidence or DWs 1 to 3 can be used to discredit the evidence of PWs to 3 can be use to discredit the evidence of PWs 1, 2 and 6. Another submission of Shri Mulla was that the PWs 1, 2 and 6 deposed that the police had recorded their statements on 11th immediately after the first information report was given. But, the copies of the statements supplied to the accused bore the date November 12, 1970 and the Public Prosecutor told the Sessions Judge that the case diary did not contain any statements recorded on November 11, 1970. The Sub-Inspector who was examined as PW 7 stated in his and that no statements had been recorded on November 11, 1970. We think that the witnesses were making a mistake when they stated that their statements were recorded by the police on November 11, 1970. The three witness PWs 1, 2 and 6 went to the police station together and the Head

Constable recorded the first information report in the presence of all of them. Apparently this led to some confusion and made the witnesses say that their statements were recorded on November 11, 1970. That there must have been some such confusion is obvious from the fact that PW 1 also stated in cross examination (paragraph 34) that her statement was recorded by the police on the third day of the loading of the report at the police station.

6. In regard to the seven persons whose names were not mentioned in the first information report, PW 1 was unable to explain why she failed to mention them in the report. She frankly stated that she cannot state the reason as to why their names were not mentioned. We think that these seven persons are entitled to the benefit of doubt and should be acquitted.

7. In the result the convictions and sentences passed on accused 1, 2, 3, 4, 10 and 11 are confirmed and their appeal is dismissed. The appeal of accused 5, 6, 7, 8, 9, 12 and 13 is allowed and their convictions and sentences are set aside. The bail bonds of accused 5, 6, 7, 8, 9, 12 and 13 will stand cancelled. Accused 1, 2, 3, 4, 10 and 11 will surrender to their bail.

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