

Purshottam and Another

Vs

State of Madhya Pradesh

Criminal Appeal No. 35 of 1976

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

03.10.1980

JUDGMENT

SARKARIA, J. –

1. Sixteen persons of village Tolkyakhedi were put on trial for the murder of one Kanahiya. The Sessions Judge convicted all the sixteen under Section 302/149, Indian Penal Code and sentenced each of them to imprisonment for life. On appeal, the High Court acquitted thirteen of them but maintained the conviction of Purshottam, Badrilal and Bansilal. Purshottam and Badrilal who are brothers, are now the appellants before us by special leave under Article 136 of the Constitution.

2. In village Tolkyakhedi, there are two warring factions, one led by Shivlal (PW 3) and other by Purshottam appellant. There has been criminal litigation between these factions. The police had also initiated security proceeding against the two parties.

3. On September 6, 1972, about 9 or 10 months before the murder in question, Radhye Shyam son of Badrilal appellant was murdered, and Kanahiya deceased, Shri Krishan (PW 1) son of Shivlal (PW 3) along with others were being prosecuted for that murder. The deceased and his co-accused PW 1 had been released on bail.

4. The prosecution story as narrated at the trial was that on June 27, 1973 at about 4 p. m., deceased Kanahiya accompanied by Shri Krishan (PW 1) and Poona (PW 2) was returning from the fields. When he reached near the habitation of the village, the 16 accused persons variously armed confronted them. The appellants and Bansilal and three other accused were armed with pharsis, Ramkaran was carrying a gun, while the rest were armed with lathis. Purshottam, Badrilal appellants and their co-accused were shouting-"Kill him Kill him". The culprits then fled away. On hearing the alarm raised by PW 1 and PW 2, Shivlal (PW 3), Nanda (PW 4) and Rameshwar also reached the spot. Mohan (PW 8) and other also went to the spot. They removed Kanahiya to his house, and administered him water. Thereupon the deceased made a dying declaration before the witness that Purshottam, Badrilal and Bansi had beaten him with pharsis, while the rest armed with lathis had surrounded him. The deceased died on his way to Nalkheda Hospital.

5. Dr. K. G. Jain (PW 10) who performed the autopsy found only one external "cut wound on left parietal area of the deceased". The dimensions of the wound were 5 1/2 inches x 1/2 inches x 1 1/2 inches extending from frontal suture to the occipital suture, 1 inch left later and parallel to midline. In the opinion of the doctor (PW 10), this injury which had been caused with a sharp weapon,

"could not be caused by two simultaneous strokes blows"

6. The reason given by PW 10 for this opinion, was that he found only one external "cut wound and there were no locations or indents" PW 10 further testified that in his opinion, after receipt of this fatal injury on the head, the victim must have immediately lost consciousness and could not have regained consciousness or spoken anything till his death. PW 10 further explained that revival of consciousness by the deceased after receiving this injury was not possible because the injury must have caused concussion followed by compression of brain. The flow of blood from sinuses over the brain matter must have paralysed the whole brain system.

7. In their earlier statements recorded under Sections 161/164, Criminal Procedure Code, PW 3, PW 4 and PW 5 claimed to be full fledged eyewitnesses of the occurrence. At the trial, however, they took up the position that they had reached the scene of occurrence just after the incident, when all the accused were still present on the spot, variously armed.

8. PW 1 and PW 2 however, consistently claimed to have witnessed the entire occurrence. All the five witnesses, namely PW 1 to 5 and also PW 8 stated that the deceased after his removal to his house and administration of water made a dying declaration that the three accused Badrilal, Purshottam and Bansilal had caused him the injuries. All these five PW 5 were close relations and partisans of the deceased.

9. As noticed by the courts below, these witnesses had the temerity to implicate all the able-bodied relations and members of the family of Purshottam and Badri appellants. These witnesses are undoubtedly partisans of the deepest dye, inimically disposed towards the appellants and the acquitted accused. Although the conduct of these witnesses, including that of PW 1 and PW 2 in implicating the thirteen acquitted accused was unscrupulous enough to brand them as liars, the High Court has watered it down by euphemistically characterising their evidence qua those thirteen accused as an "exaggeration". We have no hesitation in saying that those thirteen accused were falsely implicated.

10. The story narrated by PWs 1 to 5 at the trial and the statement of PW 1 in the FIR to the effect, that the deceased had after his removal from his house and administration of water regained consciousness and made a dying declaration implicating the appellants and Bansi as his assailants, and the other thirteen accused as the associates and instigators of those assailants, was sharply and squarely contradicted by the evidence rendered by PW 10.

11. The High Court has accepted the testimony of the medical witness on the point that after receiving "the injuries it was not possible for the deceased to have spoken and given a statement." For this reason it rightly disbelieved the evidence of PWs 1 to 5 in regard to the story of the dying declaration alleged to have been made by the deceased. It may well have said that in view of the cogent, clear and convincing evidence of the doctor (PW 10), the conclusion was inescapable that the story of this dying declaration had been falsely fabricated by the PWs 1 to 5.

12. The High Court further rightly observed that "from the changing stands that PW 3 Shivilal, PW 4 Nanda and PW 5 Rameshwar look about their claim to be eyewitness or about their reaching at the scene of occurrence immediately after the incident, we have no doubt that their testimony as eyewitness could not be accepted and it appears that realizing this situation, ultimately at the trial they also gave up the position of being eyewitnesses to the incident." Even so, the court proceeded to say; "But it could not be contended that the evidence of PW 1 Shri Krishan and PW 2 Poona

could be discarded completely." Thereafter it accepted the evidence of PW 1 and PW 2 which was to the effect, that all the three accused namely, Purshottam and Badri appellants and Bansi accused (whose appeal is not before us) had simultaneously hit the deceased on the head with pharsis.

13. As here, there also it was contended that this version of PW 1 and PW 2 regarding the injury of the deceased being the result of three separate blows stood contradicted and falsified by the evidence of the medical officer (PW 10). While noting that there was a clear contradiction between medical testimony and the alleged eyewitnesses on this vital fact, the High Court brushed aside the evidence of PW 10 in regard to this pivotal fact, with the convenient remark that "the opinion of the doctor on this aspect of the matter is merely an opinion and not a fact found by him." In the opinion of the High Court " the length of the injury, its width and its extent would indicate that ordinarily such an injury may not be possible by one blow alone." With respect, we are unable to appreciate this approach adopted by the High Court. Dr. K. M. Jain was a medical expert. He had performed the post mortem examination and noted the nature and dimensions of this wound. He has given clear, irrefutable reasons founded on physical facts noted by him at the autopsy, - which we have noticed earlier in this judgment - in support of his firm opinion that the only external injury found on the body of the deceased could not be the result of two simultaneous blows. In the ordinary course of human events and experience also, it was extremely improbable, if not altogether impossible, that three blows simultaneously given by three different persons from different directions with sharp edged weapon would land with such precision and exactitude so as other characteristic as those of the external wound found by Dr. Jain (PW 10) on the head of the deceased. The version of PW 1 and PW 2 with regard to this vital fact was inherently improbable and intrinsically incredible. It could not be accepted in preference to the evidence of the medical expert.

14. Learned counsel for the State, drew our attention to the evidence of the Head Constable (PW 14) and the inquest report (Ex. P. 38) prepared by him.

15. In this report (Ex. P-38) as well as the trial the Head Constable has stated that this injury on the head of the deceased was 6 fingers long and 1/2 inch wide and appeared to be a combination of three injuries. It is not possible for us, as the counsel wants us to accept this crude and inexperienced opinion of the Head Constable in preference to the expert opinion of the medical officer who had performed the post mortem examination.

16. In sum, the ocular of PW 1 and PW 2 had been falsified by the medical evidence on two vital points. Moreover, PW 1 was one of those persons who was being prosecuted for the murder of the son of Badri appellant, and PW 2 was the brother of PW 1. PW 1, who is the star witness of the prosecution, was on an anathema to the accused. Had he been present in the company of the deceased, he could not have been allowed by the accused to escape unscathed. The same remarks apply to a lesser degree as PW 2.

17. For these reasons, we allow this appeal and acquit the appellants. Their bail bonds are discharged.

</html