

State of Uttar Pradesh

Vs

Manoharlal and Others

Criminal Appeals Nos. 334 and 335 of 1975

(Syed M. Fazal Ali, A. Varadarajan JJ)

08.01.1981

JUDGMENT

FAZAL ALI, J. –

1. These appeals by special leave are directed against the judgment of the Allahabad High Court by which the respondents in both the appeals were acquitted of the charges under Section 302/149 of which they were convicted by the Sessions Judge. We have heard the counsel for the parties and have gone through the judgment of the High Court which is extremely short and cryptic and contains no discussion of the evidence on its intrinsic merits.

2. The High Court seems to have resorted to the easy course of throwing out the entire prosecution case merely on the question of identification. The High Court held that the occurrence must have taken place while it was dark and as there was no sufficient light to enable the eyewitnesses to identify the assailants of the deceased, the identity of the respondents was not established. In coming to this finding the High Court completely overlooked the fact that all the accused were known persons belonging to the same village and bore animus against the deceased. The High Court further failed to consider that two of the eyewitnesses were injured and had the opportunity of seeing the accused persons from a very close distance and even if there was no sufficient light, they could have been identified by voice, by gait and by their features. The occurrence had taken place towards the end of February in an open field at about 5.30 p.m. when it would not be so dark as to make identification impossible. The High Court, however, by a process of involved reasoning based on purely conjectures and surmises assumed that the occurrence must have taken place near about 7.30 p.m. so as to exclude identification of the accused by the witnesses. The High Court ought to have considered the heinous nature of the offence alleged to have been committed by the accused resulting in the death of two persons and had completely ignored the human factor which may have delayed the informant, Bhajan Lal, in going to the station and sending a telegram regarding the occurrence when giving sufficient allowance for the fact that before proceeding in the matter, the witnesses would take sometime to compose themselves and decide the course of action. In fact, the High Court has made more or less a computerised approach to the case without at all giving any allowance to the human factor. Another error into which the High Court has fallen is to reject the entire evidence of the eyewitnesses merely on the ground that they were interested or inimical. This Court has laid down in several cases that while the evidence of interested eyewitnesses may be approached with a little caution but it cannot be discarded only on the ground of being of a partisan nature. The High Court should have appraised the testimony of the witnesses on its intrinsic merits to determine its credibility. The High Court has not at all gone into the intrinsic merits of the evidence, nor has it tried to displace a large number of circumstances taken into account by the learned Sessions Judge in holding that the prosecution case was proved. With due deference to the

learned Judges who decided this appeal, we are constrained to observe that the judgment is extremely slipshod and is not in accordance with law. We would have appraised the evidence ourselves, but as we feel, that the High Court has shirked its duty to decide the appeal in accordance with law, we would like the High Court to reconsider this case and make a correct approach according to the well settled principles of the appreciation of evidence. We, therefore, allow the appeal and remand the case back to the High Court for a fresh hearing and disposal in accordance with law and in the light of the observations made by us. We, further, direct that the appeal shall be heard by a Division Bench consisting of judges other than the judges whose judgment we have set aside. The appeals should be heard within two months from today.

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