

Dharam Pal

Vs

State of Uttar Pradesh

Babu Lal

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 411 of 1974 and 81 of 1975

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

25.03.1981

JUDGMENT

1. This appeal by special leave is directed against the judgment of the Allahabad High Court by which the order of acquittal passed by the trial Court was reversed and the appellant was convicted under Section 307, Indian Penal Code and sentenced to undergo rigorous imprisonment for four years.
2. There were two accused in this case, Dharam Pal and Babu Lal. Babu Lal had filed a separate special leave petition in which leave was granted which is Criminal Appeal 81 of 1975. This appeal also arises out of the judgment under appeal. We have taken on record the file of Criminal Appeal 81 of 1975. This judgment will govern both the appeals.
3. The facts of the case have been detailed in the judgments of the courts below and it is not necessary to repeat the same.
4. It appears that there was a party faction in the village and the accused belonged to one rival faction, the deceased being in the opposite camp. On January 20, 1968 at about 7.30 p.m. when complainants Giri Lal and Baljit were returning from the court and reached the village at 7.30 p.m., the appellants surrounded them and assaulted complainant Giri Lal with lathis. FIR was lodged at the police station and after the usual investigation, a charge-sheet was submitted. The trial Court after considering the evidence on its intrinsic merits found that in view of the party faction and the night being a dark one, it was not possible for the complainants to identify the accused. The trial Court accordingly acquitted the appellants. Thereafter, the State filed appeal before the High Court which reversed the judgment of the trial Court after believing the three eyewitnesses, namely, Giri Lal, Baljit and Anand Swarup. The High Court did not accept the finding of the trial Court that identification was not possible because the High Court thought that the witnesses being known persons, even though they had assaulted from behind, they could have been identified by the complainants and the other witness. The High Court found that all the three eyewitnesses were reliable and, in spite of enmity between the parties, there was not reason to distrust the testimony of these witnesses. On the other hand, the trial Court had given good and cogent reasons for disbelieving the eyewitnesses, one of them being that these witnesses were not only inimical but

belonged to the same group to which the complainant belonged and had been continually deposing in all cases for the complainant. Another reason given by the trial Court was that, although some independent witnesses appeared on the scene, they were not at all produced by the prosecution. The trial Court also laid stress on the circumstance that the definite case made out by the complainant Giri Lal in the FIR was that he was assaulted by a spear. In the course of the evidence, however, the witnesses sought to make improvement by changing their statements and stated that the complainant was assaulted by a lathi which had an iron rod attached to it, i.e. phuli. The High Court on the question of weapon has merely conjectured that the complainants may not have noticed the exact nature of the weapon. We find ourselves unable to agree with the conclusion of the High Court because villagers can certainly distinguish between a lathi and a spear. It is obvious that in court the witnesses were made to depose that the appellant was not armed with a spear because medical evidence destroyed the case of the complainant that he was injured by spear and the injuries found on the person of the complainant could be given only by a blunt weapon like lathi. Secondly, on the question of identification also the High Court finds that though the night was dark, yet it speculated that it might have been possible for the complainants and witness to identify the appellants. Here also, with due respects we do not agree with the High Court. The learned trial Court has pointed out that the occurrence took place at 7.30 p.m., almost two hours after the sunset when the night was absolutely dark. It was also found by the trial Court that from the calendar it appears that the moon would be visible only at 9 p.m. Thirdly, the trial Court pointed out that the first blow given by the assailant on the head would naturally render the complainant unconscious and he would therefore not be able to identify the assailants. Another important fact which the High Court failed to notice was that Giri Lal in his statement before the police did not name Dharam Pal or the other appellant at all but merely said that he was assaulted by some badmashes. Here also, the High Court speculated that as the appellants were not persons of good character, by using the word badmash the complainant must have referred to the appellants only. This argument also is based purely on speculation. If the complainant actually knew and identified the appellants, there was no reason for him not to name them before the police. The fact that the complaint did not name the appellants clearly shows that he was not able to identify the appellants. Taking the case of the prosecution or the reasoning of the High Court at its highest, it cannot be said that in view of the circumstances and the darkness, the possibility of mistake in identifying the assailants cannot be reasonably excluded. Furthermore, it is well settled that even if the High Court may not have agreed with the conclusion arrived at by the trial Court, if the view taken by the trial Court was reasonably possible, that would be no ground to reverse the order of acquittal. In the instant case, even accepting the reasoning of the High Court at its face value we are not in a position to hold that the view taken by the trial Court was not reasonably possible.

5. For these reasons, therefore, the appeals are allowed and the convictions of and sentences passed on the appellants are set aside. They are on bail. The appellants would now be discharged from the bail bonds and need not surrender.

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