

State of Rajasthan

Vs

Smt. Kalki and Another

Criminal Appeal No. 543 of 1976

(O. Chandrachud, A. P. Sen, Baharul Islam JJ)

15.04.1981

JUDGMENT

ISLAM, J. -

1. This appeal by special leave on behalf of the State of Rajasthan is directed against the judgment of the Rajasthan High Court acquitting the two respondents, Shrimati Kalki alias Kali and her husband, Amara (along with four other co-accused). Respondent Kalki was convicted under Section 302 and Section 148 of the Penal Code and sentenced to imprisonment for life and for rigorous imprisonment for two years, respectively. The five other accused persons including respondents, Amara, were convicted under Section 302 read with Section 149 and under Section 147 of the Penal Code, and each of them was sentenced to imprisonment for life and to one and a half years rigorous imprisonment respectively.
2. The material facts of the prosecution case were that there was a land dispute between Nimba (PW 6) father of the deceased, Poona, on the one hand, and respondent Amara and the members of his family, on the other. On July 17, 1970 at about sunset the accused persons of whom respondent Kalki was armed with an axe and respondent, Amara with a dharia, came to the house of the deceased. At that time the deceased was inside his hut with his wife Mooli (PW 1), raised an outcry when, Geli, mother (PW 2) of the deceased who had been at some distance from the hut came running to the place of occurrence and saw the assailants leaving the place.
3. Nimba lodged a report at the police station at Nana. Police registered a case. In due course the case was sent to, and tried by, the Sessions Judge who convicted and sentenced the six accused persons including the two respondents as stated above.
4. This Court granted special leave to appeal only against the two respondents and refused it as against the other four. The question before us is whether the two respondents or any of them caused the death of Poona. There is no dispute that Poona met a homicidal death.
5. The High Court has set aside the order of conviction and sentence passed by the Sessions Judge on the grounds (1) that PW 1 the widow of the deceased "is..... a highly interested witness, inasmuch as, she is the wife of the deceased and there was an enmity between the deceased and the accused on account of the dispute about the agricultural land", and (2) "that there are material discrepancies in her statement".
6. We have been led through the evidence of PW 1, the only eyewitness in the case, of PW 2, Geli, who says that she saw the respondents leaving the place of occurrence with the weapons in their

hands, and of PW 5 the medical officer, who held the post-mortem examination on the deceased. His evidence fully supports the evidence of PW 1 who deposed that respondent Kalki gave a blow on the neck of the deceased with an axe. PW 5 found one incised wound measuring 5" x 2" x 4" on the lateral side of the left side of neck. On a perusal of the evidence of these witnesses, we do not have the least doubt in our mind that it was respondent Amara came along with his wife with a dharia with the common intention of causing the death of Pooona. In fact it was he who called out Pooona from inside the hut, and felled down and facilitated the murder of Pooona by his wife, Kalki.

7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds : (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'. In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents.

8. The second ground on which the High Court refused to place reliance on the evidence of PW 1 was that there were 'material discrepancies'. As indicated above we have perused the evidence of PW 1. We have not found any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent, Kalki, gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the deposition of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of PW 1.

9. Learned counsel for the respondent submitted that the appeal involved only appreciation of evidence and this Court may not interfere with the findings of facts resulting from appreciation of evidence. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice.

10. In our opinion the guilt of the two respondents has been established by the prosecution beyond reasonable doubt and their acquittal resulted in grave miscarriage of justice.

11. In the result we set aside the order of acquittal passed by the learned High Court and convict and respondent Kalki alias Kali under Section 302 of the Penal Code and respondent, Amara, under Section 302/34 of the Penal Code, and sentence each of them to suffer imprisonment for life.

12. The appeal is allowed. The respondents are said to be on bail. They shall surrender forthwith to serve out their sentences.

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