

State of Uttar Pradesh

Vs

Raj Nath and Others

Criminal Appeal No. 2284 of 1975

(V. B. Eradi, A. P. Sen JJ)

14.12.1982

ORDER

1. This appeal by special leave is directed against a judgment of the Allahabad High Court dated January 10, 1975 setting aside the judgment and sentences passed by the 2nd Temporary and Civil Sessions Judge. Varanasi dated February, 17, 1971 and acquitting the respondents of an offence under Section 302 read with Section 149 of the Indian Penal Code. Five of them have also been acquitted of an offence under Section 148 and the remaining two of an offence under Section 147 of the Indian Penal Code.

2. It is not necessary for purposes of this appeal to set out the facts in detail except to mention that the deceased Sabha Shankar died of a gunshot wound in front of his house on August 13, 1968 at about 122.30 p.m. The First Information Report (Ex. P-1) was lodged by PW 1 Amarnath a distant collateral of the deceased, at Police Station Mirzamurad on the same day at about 2.45 p.m. stating that the deceased had been shot dead by the accused Janardan, who was armed with a gun, at the exhortation of the other accused Raj Nath, Anirudh, Sudhakar, Vibhakar alias Mangu, Harihar alias Sallar and Vijai Dutt alias Jhurul who were present armed with various weapons. The prosecution examined four witnesses PW 1 Amarnath PW 2 Sheomurat PW 3 Aparbal, and PW 4 Shyam Behari. According to the version of the eye-witnesses, on the day of occurrence PW 7 Shri Deo Murti Pandey, Advocate, appointed as a Commissioner, had come to the village from Varanasi to conduct a local inspection. When Shri Pandey asked that the door be opened to enable him to take measurements of the room, Mst. Devi Dei mother of PW 1 Amarnath, produced the key with the aid of which the door was opened. Thereafter, an altercation is said to have ensued resulting in the deceased being shot dead by the accused Janardan. These witnesses speak of the presence of the remaining six accused armed with various weapons on the spot. According to PW 7 Shri Deo Murti Pandey, both the parties came on the scene armed with lathis etc. and thereupon he, apprehending danger, left the scene of occurrence. On his own showing, this witness was anxious to get away from the place of incident and he actually ran towards the railway station where he found the Upper India Express standing at the platform. He boarded the train and returned to Varanasi. This witness therefore had not witnessed the incident.

3. Having heard the parties, we are satisfied that the order of acquittal recorded by the High Court has resulted in the manifest miscarriage of justice. The High Court has made no attempt to come to grips with the evidence of the eye-witnesses. Indeed, the High Court has not dealt with the evidence at all, not is there any effort made to evaluate the same. The entire judgment of the High Court consists of one paragraph which may be reproduced below :

According to the statements of all the eye-witnesses appellant Janardan was armed

with a gun. Vijai Dutt and Harihar were armed with gundasas. Sudhakar and Vibhakar were armed with spears and Anirudh and Rajnath were armed with lathis when the room of Bardwar was opened by the mother of Amarnath (PW 1). Sudhakar and Rajnath appellants then said that the said room of the Bardwar had been backed by Amarnath forcibly a few days earlier. On hearing this Sabha Shankar (deceased) had declared that they were telling a lie and that this room had been locked by Amarnath since a long time. Thereafter, a verbal altercation had taken place between Rajnath appellant and Sabha Shankar (deceased) and Sudhakar and Rajnath appellants had said that the deceased should be beaten. Sabha Shankar (deceased), who was empty handed, had then proceeded towards his house followed by the appellants and when he was emerging from his house armed with a lathi, he was shot by Janardan appellant at the instigation of Sudhakar and Rajnath appellants. Sri Deo Murti Pandey, Vakil Commissioner (PW 7) who is completely independent and appears to be a wholly reliable witness on the other hand stated that after the room of the Bardwar had been opened by the mother of Amarnath (PW 1) the party of Rajnath appellant said that the said room had been locked only a few days earlier by Amarnath and that it was in their possession. Thereafter, a verbal altercation took place between the deceased and the party of Rajnath appellant. He tried to pacify them but unable to do so. Thereafter, both the parties, namely, the appellants and the party of the complainant went towards their houses. He stayed near the Bardwar for about two minutes and thereafter when he found some persons coming with lathis, he apprehended that a fight was likely to take place and he ran away. It is thus clear that the version of the eye-witnesses that the appellants armed with gun, spears, gundasas and lathis proceeded towards the house of Sabha Shankar (deceased) after he had gone towards his house and Sabha Shankar (deceased) was fired at by Janardan on the instigation of Sudhakar and Rajnath appellants is completely contradicted by Sri Deo Murti Pandey who even did not state that the appellants were armed with any weapons. The version of the incident given by the eye-witnesses cannot therefore, be relied upon. All the appellants are, therefore, entitled to the benefit of doubt and deserve to be acquitted.

4. It would therefore appear from the observations made by the High Court that the ground on which the testimony of the eye-witness has been rejected is that it stands contradicted by the evidence of PW 7 Shri Deo Murti Pandey. We have gone through the evidence of PW 7 Shri Deo Murti Pandey and in our opinion there is nothing in his evidence which would justify the High Court to reach the conclusion that it did. It was not proper for the High Court to totally brush aside the testimony of the eye-witnesses without discussing the evidence and without coming to a conclusion whether they were trustworthy and reliable.

5. For these reasons, the judgment and order of the High Court are set aside and we direct the High Court to dispose of the appeal afresh, without being influenced by any of the observations made above. The respondents shall surrender to their bail-bonds which stand cancelled.

</html