

State of Uttar Pradesh

Vs

Jageshwar and Others

Criminal Appeals Nos. 302-307 of 1974

(CJI Y.V. Chandrachud, V.D. Tulzapurkar JJ)

14.02.1983

JUDGMENT

CHANDRACHUD, C.J. –

1. Eleven persons were tried by the learned Sessions Judge, Fatehpur, principally for offences under Sections 302 and 396 of the Penal code. One of them, Manohar, was acquitted while the remaining 10 were sentenced to death. By a judgment, which leaves much to be desired, the High Court of Allahabad set aside the order of conviction and sentence and acquitted all the accused. These appeals are by the State of U. P. against the order of acquittal recorded by the High Court.

2. In support of the charges leveled against the accused, the prosecution relied upon the evidence of five witness who claim to have identified them. These witness are : Sundi(PW 1), Sheo Nandan (PW 12), Ram Bali (PW 18), Mani Prashad (PW 19) and Sham Behari (PW 27). In addition to the evidence of these eye-witness, the prosecution relied upon certain recoveries made from or at the instance of the accused and the evidence of the Ballistic Expert, Shariq Alvi (PW 32).

3. The occurrence took place at about midnight between. October 28 and 29, 1970 in a village called Chak Quazipur. Four persons, Ayodhya, his two sons Amar Singh and Kanchan, and a neighbour Thakurdin, who were sleeping in the open space in front of the house, were shot dead on that night by a large group of 13 or 14 persons Sundi, Ayodhya's wife, was sleeping inside the house with another child of theirs. She got up on hearing the sound of gunshots but was unable for some time to go out of the house since the door was bolted from outside. In the meanwhile, some of the accused entered her house by jumping over the roof and assaulted her. They took away a gun, snatched her ear-rings and decamped with sundry articles from the house. Eventually, when she came out, she saw the dead bodies of her husband, their two sons and the neighbour Thakurdin. She lodged the First Information Report (Ex Ka-1) of the afternoon of the 29th in which she mentioned the names of three accused : Durga, Sheo Balak and Mata Din.

4. The basic difficulty which we find in accepting the evidence of Sundi and the other four eye-witnesses on the question of identification of the accused is that, according to these witness, as many as 14 or 15 persons had taken part in four murders at dead of night. Every one was then soundly asleep and the people around woke up, according to their own evidence, either on hearing the sound of gunshots or the crying and wailing. Apart from the inherent difficulty involved on Identifying large group of 14 or 15 persons at dead of night in the light of a tiny kerosene lantern, it is highly unlikely that the accused would continue to remain at the scene of offence after committing the murders. The villagers undoubtedly collected at the spot, but that was after the event. The accused would certainly not wait at the place for the villagers to arrive. We consider it

improbable that in the circumstance narrated by Sundi, she would have the courage of rushing to her house and then if she did so, the accused would still be at the place where the four persons were lying murdered. Sundi's evidence is clear on the point that the assailants have taken care to prevent her from coming out of her house by bolting the main door from outside. The three accused named and identified by Sundi are not the ones who had entered her house. They are those who are alleged to have participated in the shooting outrage outside, under the neem tree.

5. The evidence of identification of the accused in the identification parade suffers from the notorious infirmities from which evidence of that nature often suffers. Indeed, if the circumstance of the case exclude the possibility of the villagers arriving at the scene of offence before the accused fled away, the evidence of identification loses its significance. After all, you identify in a parade a person whom you have seen in the occurrence.

6. The gun, Ex. 23, is alleged to have been recovered in pursuance of a statement made by accused Durga. The evidence of the Ballistic expert, Shariq Alvi, shows that the shells which were found at the spot of occurrence were fired from that gun. This would be very good evidence to connect an accused with a crime but, the police did not recover the gun from Durga. Nor, indeed did he make any statement that he had concealed it at a place which he would point out. The discoveries under Section 27 of the Evidence Act are not of guns and daggers used in a crime. Guns and daggers have an ancient origin and one does not have to hunt for an accused to discover them. The discovery, mostly and really is as regards the authorship of concealment. conduct and concealment are incriminating circumstances and their discovery becomes relevant and admissible under section 27 of the Evidence Act. Here, we are left with the position that gun was recovered from a person called Sunder Ahir and the shells or cartridges found at the scene of the offence were fired from that gun. Inexplicably, Sunder has not been examined in the case. His evidence could have shown, what is alleged by the prosecution, that Durga had borrowed his gun at about the materials time. Sunder, not having been a witness in the case, there is no legal evidence on the record to connect Durga with the gun.

7. The evidence regarding the recovery of a pistol, Ex. 6, from accused Ram Vishal is less unacceptable than the evidence of the recovery of the gun from Sunder but, considering the large mass of useless evidence which the prosecution led, this single circumstance will not be safe to act upon for convicting but one out of 11 accused, viz. Ram Vishal.

8. If the High Court had considered this matter carefully and had given good reasons in support of the order of acquittal passed by it, these appeals would not have been admitted by this Court. It is evident that special leave was granted on the State of U. P. to file these appeals for the reason that the judgment of the High Court does not contain any analysis or discussion of the evidence which it was the plain and bounden duty of the High Court to do. If 10 persons sentenced to death could be acquitted on mere assumptions, there is a fear that 10, who are not guilty, could be convicted by the same different process. Care and brevity are not strange bed-fellows and both can combine in a judgment, with some beauty for a change. But the compression, in a few brief pages, of a confirmation case by a court of first appeal, involving the death sentence imposed upon 10 persons for four murders, is an act of some uncommon ingenuity which is best left alone. The High Court rejected the evidence led by the prosecution by applying an easy and uniform yardstick that the investigations was faulty. That should not have been done. Each piece of evidence must be considered and assessed on its own merits and then accepted or rejected.

9. For these reasons we confirm the order of acquittal passed by the High court and dismiss these

appeals.

</html