

Purna and Another

Vs

State of U. P.

Criminal Appeal No. 17 of 1983

(D.A. Desai, E.S. Venkataramiah JJ)

25.02.1983

ORDER

1. Special leave granted.

2. PW 1 Hari Babu claimed that plot No. situated in village Abdul Navipur was in his possession and he had raised crop. On March 11, 1973 around 3 p.m. PW 2 Babu Lal a relation of PW 1 Hari Babu went to the field and found about 15 persons present in the field. Some of them were cutting the crop and 5 persons including the present two appellants Purna and Guru Prasad were seen removing the crop. He returned to Hari Babu, PW 1 and gave him the information of what was happening in plot No. 169. Immediately PW 1 Hari Babu contacted Circle Officer on telephone who directed the flying squad of police to visit the scene of occurrence. PW 2 Babu Lal returned to the field. Some policemen came in a jeep to the field. All those who were in the field except one Baij Nath decamped, The officer Incharge of the flying squad took Baij Nath and PW 2 Babu Lal to P. S. Kotwali. Presumably, after questioning them no case was registered. PW 1 Hari Babu went on sending applications to higher officers without success. Ultimately on March 15, 1973 he filed a complaint in the Court of the Additional District Magistrate (Judicial), Mathura against 15 persons including the present two appellants for having committed an offence under section 395, Indian Penal Code. It appears that the learned Magistrate committed the accused to the Court of Session.

3. The case came to be tried by First Additional Sessions Judge, Mathura. PW 2 Babu Lal, PW 3 Tikam and PW 4 Chitar Mal were examined as witness to the occurrence. The learned First Additional Sessions Judge accepted the evidence of the prosecution and convicted all the 15 accused for having committed an offence under section 379 and sentenced each of them to suffer RI for 2 years. All 15 convicted accused persons preferred Criminal Appeal No. 9119 of 1975 in the High Court of Judicature at Allahabad. During the pendency of the appeal accused Zorawar, Ram Singh and Raja Ram appellants died and their appeal abated. The High Court held that the remaining 12 appellants were shown to have committed an offence under Section 379 and confirmed the conviction. On the question of sentence the learned Judge held that considering the fact that the value of the crop stolen was about Rs. 500 and the incident took place nearly eight years before the date of Judgment, the sentence of 2 years' RI awarded to each of the appellants is excessive and accordingly reduced the substantive sentence to sentence already undergone and imposed a fine of Rs. 100 on each of the appellants.

4. Appellants Purna and Guru Prasad have filed this appeal by special leave.

5. Mr. R. K. Garg, learned advocate who appeared for the appellants urged that both the Courts are in error in rejecting the evidence of alibi led by Purna. It was urged that the relations between the

appellant guru Prasad and PW 1 Hari Babu were strained as they had fought election against each other and therefore, he was falsely involved in this case. It was urged that both these aspects were not examined by the High Court.

6. Ordinarily this Court does not undertake re-appreciation of evidence unless failure to do so will lead to miscarriage. With this precaution, we may examine the two contentions raised by Mr. Garg in this appeal.

7. Adverting to the case of Purna, his specific and positive defence was that on the date of occurrence that is on March 11, 1973 he was assigned the duty from 8.00 a.m. to 5.00 p.m. in Hydel Sub-Division, at Mathura. In order to substantiate this defence, he examined DW 1 Mani Kant Trivedi a clerk in the office of S. D. O. Hydel who deposed that appellant Purna was on duty from 8.00 a.m. to 5.00 p.m. on March 11, 1973 in Hydel Sub-Division at Mathura. In support of this statement, he produced the time keeper; record made at the gate of power station the time of entering the power station at 8.00 a.m. He stated that the gate is locked at 8.00 a.m. and reopened at 5.00 p.m. and the record shows that appellant Purna was in the Hydel Sub-Division on that day from 8.00 a.m. to 5.00 p.m. According to PW 1 Hari Babu and PW 2 Babu Lal, the incident occurred around between 2.00 p.m. to 3.00 p.m. Even allowing for a margin of couple of hours on either side if the documentary evidence produced by the DW 1 Mani Kant Trivedi is believed, appellant Purna could not be at the scene of occurrence which is in a filed bearing plot No. 169 situated in Abdul Navipur. The High Court declined to accept this evidence by relying upon the evidence of one T. S. Chauhan who was posted as Junior Electrician in the Aurangabad Sub-Station in March 1973. The circumstances in which T. S. Chauhan came to be examined are worth noticing. Mr. Chauhan was not examined in the Court. It appears that the High Court summoned him and examined him. Conceding that the High Court considered examining Mr. Chauhan imperative for the end of justice, yet his evidence in our opinion is worthless. Mr. Chauhan stated that on Sundays all the employees are on leave except a few who come and even those who come to the workshop leave the place by 12 noon. It is true that March 11, 1973 happened to be a Sunday. But Mr. Chauhan does not say a single word about the register maintained at the gate. He has no knowledge whether the appellant Purna was or was not present in Hydel Sub-Division at Mathura. Witness Chauhan himself was working at Aurangabad Sub-station. He had no personal knowledge about the presence of appellant Purna at the power station. His evidence is of a general nature and is very vague and it could not be accepted in preference to the evidence of D.W. 1 Mani Kant Trivedi whose evidence was borne out by the contemporaneous record. We are therefore of the opinion that the High Court was in error in accepting the evidence of Mr. Chauhan in preference to the evidence of Mr. Mani Kant Trivedi. Once evidence of Trivedi is accepted, which we find trustworthy, it would appear that at any rate appellant Purna was not present at the scene of offence at the time of occurrence.

8. Turning now to the case of second appellant Guru Prasad, it may be pointed out that according to the complainant this role was one of carrying away the crop cut by other accused. It appears that the relations between him and complainant PW 1 Hari Babu were strained since long. Guru Prasad was a candidate against PW 1 Hari Babu in Panchayat election. Because of other disputes appellant Guru Prasad had gone on hunger strike against Hari Babu. Unfortunately, the High Court has not examined this aspect of the matter. Now if the matter is to be viewed only on the submission of strained relation, we would be least persuaded to interfere with the conviction of appellant Guru Prasad. However there are certain features of this case, which point in the direction that taking advantage of an incident that occurred on March 11, 1973, PW 1 Hari Babu appears to have involved as many persons as possible in the incident.

9. Let us notice this feature. Both the appellants are Government servants. It is difficult to believe that they would undertake this hazardous venture, and that too with a view to helping Baij Nath who had dispute about possession of plot No. 169 with PW 1 Hari Babu. In such a situation, the tendency to involve someone against whom there is a grouse is not unknown. Appellant Guru Prasad had made himself an enemy of PW 1 Hari Babu by contesting election against him. PW 1 Hari Babu may not miss an opportunity of involving Guru Prasad in the incident that occurred of March 11, 1973. We say so with Certain amount of circumspection because there are some aspects of the case which have left us guessing.

10. To begin with, information was lodged with the flying squad of police when the occurrence was in progress.

11. Flying squad of police visited the scene of occurrence and at that time PW 2 Babu Lal was present. Babu Lal is a near relation of Hari Babu. Even though police visited the scene of crime and heard Babu Lal asserting that Hari Babu was in possession of the filed, no action was taken by the police. Trespass is a cognizable offence and we fail to see why the police would be recalled that accused Baij Nath was present at the scene of crime and he was taken by the flying squad to the police station. Yet police took no action.

12. The private complaint was filed by Hari Babu of March 15, 1973 that is nearly four days after the occurrence. And in this complaint, fairly belated as it appears to be, 15 persons (accused) were named which included the present two appellants. It was however, urged that the names of the accused were already disclosed in the two applications already sent by Hari Babu to the superior police officers. The condition of these applications when produced in the Court leave much to be desired. Therefore, no reliance can be placed on them. It would therefore appear that the information of the offence was lodged after considerable unexplained delay. This would introduce serious infirmity in the prosecution case against the accused-appellants.

13. The dispute was between PW 1 Hari Babu and accused Baij Nath about the possession of plot bearing No. 169. There is nothing to show that the present appellants were either interested in Baij Nath or had anything to do with plot No. 169. It is difficult to believe that these two Government servants would in a spirit of bravado join Baij Nath. We have therefore a considerable hesitation in accepting evidence of three witness that the present appellants were present at the scene of occurrence or either participated in the occurrence.

14. In view of the state of evidence herein discussed we have considerable hesitation in accepting the prosecution case against the present appellants and we are of the opinion that the participation in the occurrence is not proved. Therefore, the charge is not brought home against them, and they are entitled to be acquitted.

15. Mr. Garg, learned counsel for the appellant stated that in any view of the matter appellants are willing to make good the loss suffered by complainant Hari Babu. Complainant Hari Babu was accordingly joined as respondent in this appeal and a notice was ordered to be issued to him. Notice has been returned with an endorsement that Hari Babu is dead. We, however, feel that the heirs of Hari Babu should be paid Rs. 500 as an ex gratia compensation for the loss, if any, suffered by them.

16. We accordingly allow this appeal, set aside the conviction and sentence imposed upon the appellants and acquit them. The sentence of fine of Rs. 100 imposed on each of the appellants is

quashed and set aside. Appellants do deposit within two months from today in the trial court a sum of Rs. 500 as ex gratia compensation to be paid to the heirs of Hari Babu. If the heirs of Hari Babu do not claim the same after the notice by the trial court, within a reasonable time the trial court should refund the amount to the appellant.

</html