

Ram Avtar Rai and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 157 of 1974

(A. Varadarajan, Ranganath Misra JJ)

12.02.1985

JUDGMENT

A. VARADARAJAN, J. -

1. This appeal has been filed against the judgment of the Allahabad High Court in Government Appeal No. 6 of 1970 in which the appellants were found guilty of offences under Sections 302, 323 IPC both read with Section 149 IPC and under Section 147 IPC. They have been sentenced to imprisonment for life under Section 302 read with Section 149 IPC and to rigorous imprisonment for one year each under Section 323 read with Section 149 IPC and Section 147 IPC. The appellants were acquitted by the learned Sessions Judge, Azamgarh. Government Appeal No. 6 of 1970 was filed against the acquittal by the trial court.

2. The case of the prosecution has been set out in detail in the judgments of the trial court and the High Court and we do not think it necessary to set it out in detail in this judgment. In short the case of the prosecution is that the appellants Kedar Rai. Subedar Rai and Ram Avtar Rai are brothers who live in the same house situate about 30 steps south of the house of the deceased, Radhe Raman who was the youngest son of Swami Nath, PW 1. The appellants Udho Rai and Ramesh Rai and brothers who are living close to the house of the deceased and PW 1. There were some proceedings under Section 107 of the Code of Criminal Procedure between PW 1 and his pattidar, Ram Narain Rai and these appellants were siding with the opponent of PW 1. In this background on October 16, 1968 at about 7.30 a.m. when PW 1 was urinating at the back of his house, Radhe Raman shouted and PW 1 rushed out and saw the appellants beating Radhe Raman with lathis, about 15 paces away from the house. PW 1 shouted and wanted to stop the appellants from beating the deceased but they beat him up also with lathis. After receiving the injuries Radhe Raman fell on the ground and the appellants continued to beat him even thereafter. Radhe Raman received as many as 34 injuries of which injuries Nos. 1, 3, 5, 6 and 14 were lacerated injuries and the others were contusions and abrasions. These injuries have been found by Dr N. Dutta, PW 5 who conducted autopsy on the body of the deceased, to be sufficient generally to cause death and to have been due to assault with lathis. PW 1 also had as many as nine lathi injuries. The First Information Report about the occurrence was given by PW 1 at the police station situate six miles away from the scene of occurrence at 11.30 a.m. on the same day. In that First Information Report, PWs 2 and 3 and some others are named as eye witnesses.

3. The case of the prosecution rests on the evidence of PWs 1 to 3. As stated already PW 1 is the father of the deceased Radhe Raman. PW 3 Chandrama Devi is wife of the deceased. PW 2 Meena Kumari is daughter of the deceased's sister.

4. The defence of the appellants was one of denial and it was their case that the occurrence has taken place 2 1/2 kilometers away from the house of the deceased at about 4.30 a.m. and that the case has been foisted against them falsely because they were siding with the opponent of PW 1 in the proceedings taken under Section 107 of the Code of Criminal Procedure.

5. The learned Sessions Judge accepted the case of the defence that the occurrence had taken place 2 1/2 kilometers away from the house of the deceased and PW 1 and not in front of their house. In that view and also because the blood-stained clothes of PWs 2 and 3 alleged to have been recovered from them by the Investigating Officer, had not been sent for chemical analysis, the trial court refused to place any reliance on evidence of PWs 2 and 3. The trial court refused to accept the evidence of even PW 1 due to certain discrepancies in his evidence. Thus the trial court found that the appellants were not guilty and acquitted them.

6. In the appeal the High Court accepted the case of the prosecution that the occurrence had taken place at 7.30 a.m. in front of the house of the deceased and PW 1. The High Court accepted the evidence of PWs 1, 2 and 3 and expressed the view that the discrepancies found in the evidence of PW 1 are not material. Thus the High Court found the appellants guilty under Section 302 IPC read with Section 149 IPC with reference to the death of the deceased Radhe Raman and under Section 323 IPC read with Section 149 IPC with reference to the injuries of PW 1 and also under Section 147 IPC on the evidence of PWs 1 to 3 and convicted them and sentenced them as mentioned above.

7. Before us the learned counsel for the appellants contended that the occurrence had taken place at about 4.30 a.m. and not at 7.30 a.m. and that the deceased had been attacked only about 2 1/2 kilometers away from the house by some others and not in front of the house of the deceased and PW 1. He further submitted that the evidence of PWs 2 and 3 should not be believed on the ground that they could not have been present at the scene of the occurrence situate 2 1/2 kilometers away from their house at the time of the occurrence and that if they had fallen on the body of the deceased during the occurrence and their clothes became blood-stained as stated by them in their evidence, it is improbable that their clothes would not have been sent for chemical analysis. It is true that the clothes of PWs 2 and 3 have not been sent to the Chemical Examiner and PWs 1 to 3 have stated in their evidence that PWs 2 and 3 fell over the body of the deceased when he was being attacked by the appellants and that their clothes became stained with blood. If the clothes of PWs 2 and 3 had become stained with blood and had been seized by the investigating officer, it is improbable that he would not have sent them for chemical examination especially having regard to the fact that the clothes seized from the body of the deceased had been sent for that purpose. Therefore, we are of the opinion that the evidence of PWs 1 to 3 that PWs 2 and 3 fell over the body of the deceased for protecting him from further attack by the appellants and that the clothes of PWs 2 and 3 were seized by the police is an improvement of the case of the prosecution. This would not, however, improbabilise the presence of PWs 2 and 3 at the scene of the occurrence.

8. The presence of PW 1 at the scene of the occurrence when the deceased Radhe Raman was attacked could not be disputed and as a matter of fact it was not disputed before us by the learned counsel for the appellants. If that is so and the deceased and PW 1 had been attacked about 2 1/2 kilometers away from their house it is improbable that the prosecution would have shifted the scene of occurrence from that place to some place near the house of the deceased merely to receive the support of the evidence of PWs 2 and 3 to sustain case. The defence theory that the deceased was attacked at 4.30 a.m. when he was on his way to the Court for attending the case under Section 107 CrPC is not acceptable for two reasons : (i) that it is improbable that he would have started so early to go the Court and (ii) that PW 1 who had been exempted from personal attendance in that case

would not have accompanied him.

9. It is true that some other persons who have been named in the First Information Report as eye witnesses have not been examined by the prosecution. But it is seen from the judgment of the High Court that there is faction in the village and that consequently other persons were not forthcoming to give evidence in this case. Therefore, no adverse inference could be drawn against the prosecution from the non-examination of other persons mentioned in the First Information Report as eye witnesses.

10. We agree with the High Court that the occurrence had taken place about 15 paces away from the house of the deceased and PW 1. It is true that blood-stained earth has not been recovered from the scene of occurrence by the investigating officer though as stated earlier the deceased had sustained as many as 5 lacerated injuries besides a number of contusions and abrasions. From the failure of the investigating officer to recover blood-stained earth from the scene of occurrence it is not possible to infer that the occurrence has not taken place in front of the house of the deceased and PW 1. The evidence of PWs 2 and 3 could not, therefore, be rejected as unreliable as has been done by the learned Sessions Judge. We agree with the High Court that as the occurrence had taken place in front of the house of the deceased PWs 2 and 3 who are members of the family of the deceased and PW 1 are natural witnesses who would have come out of the house on hearing the alarm of the deceased who had received as many as 34 injuries. Therefore, we accept the evidence of PWs 2 and 3 who corroborate in a large measure the evidence of PW 1. The discrepancies relied upon by the learned Sessions Judge in his judgment for rejecting the evidence of PW 1 are not material discrepancies. It is not possible to reject the evidence of PW 1 altogether on account of the discrepancies having regard to the fact that he is an injured witness whose presence at the scene of the occurrence when the deceased was attacked was not disputed before us by the learned counsel for the appellants as mentioned above. In these circumstances, we find that the High Court was justified in accepting the evidence of PWs 1 to 3 and finding the appellants guilty and convicting them under Section 302 IPC read with Section 149 IPC in regard to the death of the deceased Radhe Raman and under Section 323 IPC read with Section 149 IPC in regard to the attack on PW 1 and also under Section 147 IPC. We confirm the conviction and the sentence awarded to the appellants by the High Court. The appeal fails and is dismissed.

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