

Lalji Singh

Vs

State of Uttar Pradesh

Rameshwar and Others

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 276 of 1975 and 371 of 1974

(A. Varadarajan, Sabyasachi Mukharji JJ)

03.05.1985

JUDGMENT

VARADARAJAN, J. -

1. These appeals by special leave are against the judgment of the Allahabad High Court in Criminal Appeal 2371 of 1970 dismissing the appeal and confirming the conviction of all the appellants under Section 302 read with Section 149 IPC, of appellants Rameshwar, Rajju and Banthu under Section 148 IPC and of appellants Kallu Singh, Lallu Singh and Lalji Singh under Section 147 IPC and the sentences awarded to them by the trial court, namely, imprisonment for life under Section 302 read with Section 149 IPC, rigorous imprisonment for two years under Section 148 IPC and rigorous imprisonment for one year under Section 147 IPC.
2. The prosecution case was that on September 3, 1976 one Satti Din was keeping a watch over his sala and other crops in his nnaultar filed while his brother Ramashankar (PW 1) was grazing his bullocks in a nearby filed. Satti Din began to drive to the pound some cattle of the appellant, Rameshwar which had strayed into his field. Then the appellant Rameshwar came there, armed with a pharsa and asked Satti Din to release the cattle. On Satti Din refusing to release the cattle, appellant, Rameshwar cried out whereupon the other appellants, Rajju, Banthu, Lalji, Kallu and Lallu came to the field. Then Rajju and Banthu were armed with a barchhi and an axe respectively while Lalji, Kallu and Lallu were armed with lathis. On seeing those appellants, Satti Din began to run towards the north. The appellants followed Satti Din and attacked him with their weapons, appellant Rameshwar opening the attack with his pharsa, and all of them beat him even after he had fallen down. On Satti Din raising alarm, Ramashankar (PW 1), Bachha Singh (PW 2), Malkhan Singh (PW 3) and Nanku went there and witnessed the occurrence and on their running towards the scene all the appellants ran away. Satti Din was found dead, and Ramashankar (PW 1) went to the police station along with two others after leaving the dead body of his brother in charge of Chowkidar Kayali. On the way Ramashankar (PW 1) and others had to cross a jungle where they saw the appellants waiting and so they got afraid and returned to their village. However, PW 1 went next morning along with one Subedar to the police station where his oral complaint was recorded by a head constable at 9 a.m. The Station House Officer, Korara Police Station, PW 6 took up investigation and went to the village and found the appellants absconding.

3. Dr. Gupta conducted autopsy on the body of Satti Din at 12 noon on the next day September 5, 1967 and found 8 incised wounds, 5 punctured wounds, and 4 contusions and the cartilage of the right ear cut through and through and he opined that the injuries were sufficient in the ordinary course of nature to cause death. The injuries were on vital parts of the body like the head, chest and abdomen. The right lung had been punctured and the mandible had been cut.

4. The appellants pleaded not guilty. Rameshwar stated that Ramashankar (PW 1) has falsely implicated him on account of enmity because he had got him prosecuted for he murder of his father. The appellants stated that they have been falsely implicated on account of enmity. The suggestion of the appellants made to the prosecution witnesses was that Bachha Singh (PW 2) and Malkhan Singh (PW 3) killed Satti Din and had falsely implicated them in this Case. They examined Ram Sarup (DW 1) and Gajraj Singh (DW 2) in support of their defence.

5. The prosecution examined Ramashankar (PW 1), Bachha Singh (PW 2) and Malkhan Singh (PW 3) as eyewitnesses. The trial court accepted the evidence of these three witnesses and convicted the appellants as stated above. Before the High Court, the main argument was that the case against the appellants, Lalji, Kallu and Lallu was not free from doubt. PWs 1 to 3 have deposed about the place and time of occurrence, deceased's Narsara Har and 5 p.m. on September 3, 1967 whereas the suggestion of the appellants was that Satti Din was attacked at Bhauli Har which is mentioned in the first information report recorded by the head constable as the place of occurrence.

6. The High Court found that the occurrence had taken place in the northern portion of the field adjoining the field Narsara Har where the dead body was found lying by the Investigating Officer, PW 6 and at 5 p.m. on September 3, 1967. The learned Judges accepted the evidence of Ramashankar (PW 1) who is the brother of the deceased Satti Din as being truthful and corroborated by the first information report. They accepted the evidence of PW 2 and found that he is a natural witness and that his evidence about the main particulars of the prosecution case has not been shaken by cross-examination. They accepted the evidence of Malkhan Singh (PW 3) that at the time of the occurrence he was going from his village Bachhrauli to Bhauli for visiting his ailing mother. The evidence of DW 2 is that the way from Bachhrauli to Bhauli lies south of Satti Din's field. The learned Judges found that he is an independent witness and that he has corroborated the prosecution evidence in all material particulars cogently and in a trustworthy manner. They found that the medical evidence corroborates the oral evidence of PWs 1 to 3 and they rejected the submission that the case against Lalji, Lallu and Kallu is not free from doubt and found on the evidence of PW 1 that those three appellants were grazing their cattle in the field of the appellant, Rameshwar at the relevant time and that they went to the scene of occurrence on being called by the appellant, Rameshwar. They accepted the evidence of PW 1 that he was the appellants waiting in the jungle which lay on his way to the police station when he was proceeding towards the police station and found that the delay in giving the first information report has been satisfactorily explained and that the head constable who recorded the first information report to the dictation of Ramashankar (PW 1) has committed a mistake in regard to the place of the incident. They rejected the defence evidence of DWs 1 and 2 and found that the prosecution has proved the case against all the appellants satisfactorily and they accordingly dismissed the appeals.

7. We were taken through the evidence of PW 1 by Mr. Frank Anthony, learned counsel for the appellants. PW 1 has no doubt stated in his evidence that on account of enmity the appellants have murdered his brother Satti Din and that He and some of his cousin brothers besides others, 15 in all, were accused in the case of murder of the appellant Rameshwar's father Karyia. It is significant to note that no suggestion has been made to him in cross-examination that he had mentioned a different

field as the place of occurrence when his oral report was recorded by the head constable at the police station. PW 1 has stated that Satti Din was not a party or accused in any case and that he had no ill-will against the accused and they had ill-will only against him, PW 1. It is also significant to note that all the appellants except Banthu have admitted in their statements recorded under Section 313 CrPC that on September 3, 1967 at about 5 or 5.30 p.m. appellant Rameshwar's cattle had strayed into the deceased's field having some standing crops and that the deceased drove the cattle for taking them to the pound and then the appellant Rameshwar came there, armed with a pharsa, and directed the deceased not to drive the cattle and shouted for help saying that "this sala will not stop doing this". The prosecution case is thus practically admitted that when the deceased was taking the appellant Rameshwar's cattle which had strayed into his field having crops to the pound Rameshwar came armed with a pharsa and asked him to release the cattle. Therefore, the prosecution has proved the origin of the occurrence. Mr. Frank Anthony did not point out any infirmity in the evidence of PWs 2 and 3. We do not find any infirmity in the evidence of PWs 1 to 3, the eyewitnesses such as to discredit their evidence regarding the occurrence and the participation of all the accused in the attack on the deceased with their weapons as alleged by the prosecution. We agree with the learned Judges of the High Court that the delay in giving the first information report is satisfactorily explained as the occurrence had taken place late in the evening on September 3, 1967 and PW 1, who proceeded to the police station along with two other persons for lodging the report after leaving the dead body in charge of the Chowkidar, saw the appellants waiting in the jungle and he returned to the village on account of fear and he went to the police station next morning along with another person and reported to the head constable. We find that the courts below were right in holding that the prosecution has proved the case against all the appellants satisfactorily and beyond all reasonable doubt. We accordingly confirm the conviction of all the appellants and the sentences awarded to them and dismiss the appeals.

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