Narayan Singh and Others

Vs

State of M. P.

Criminal Appeals Nos. 308 and 420 of 1976

(Syed M. Fazal Ali, A. Varadarajan JJ)

19.07.1985.

JUDGMENT

FAZAL ALI, J. -

1. These appeals are directed against a judgment of the Madhya Pradesh High Court convicting the appellants under Sections 148 and 302 read with Section 149 of the Indian Penal Code and sentencing them to imprisonment for life.

2. By our Order dated July 12, 1985, we had dismissed the appeals. We now proceed to give reasons for our Order.

3. The facts of the case have been detailed in the judgments of the Sessions Judge and the High Court and it is not necessary for us to repeat the same all over again. It appears that there was a chronic land dispute between Bhojraj (deceased) and the appellants so much so that Bhojraj had to enlist the services of one Abbas (PW 11) to accompany him wherever he went so as to guard him against assault. This means that the deceased expected serious threat to his life from the appellants due to the aforesaid enmity. On October 5, 1971 at about 2.30 p.m. while Bhojraj was proceeding towards his village, accompanied by PW 11, the appellants reached the place of occurrence along with 5-6 persons and assaulted Bhojraj with swords and farsis as a result of which Bhojraj succumbed to his injuries. PW 1, who was not an eyewitness, on hearing of the incident reached the police station at 4.30 p.m. and lodged an FIR. The distance of the police station from the place of occurrence was about 10 miles. As the incident took place at about 2.30 p.m. and the report was lodged within two hours, there can be no doubt that the report was made promptly and, therefore, the question of concocting the case cannot possibly arise.

4. In support of the prosecution, the evidence led may be classified into three categories -

> (1) the evidence of PW 11 (Abbas) who was a guard of the deceased and, as usual, was accompanying his master, Bhojraj, and saw the entire incident himself,
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> (2) one of the accused seems to have made an extra-judicial confession to PWs 5 and 9 and admitted that he assaulted the deceased with sword and farsi, and
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> (3) at the instance of the accused, blood-stained weapons were recovered which, after being examined by serologist, were found to contain human blood.

5. The learned Sessions Judge rejected the prosecution case for paucity of evidence and acquitted

the accused. The State then filed an appeal before the High Court which, after careful examination of the evidence, reversed the judgment of the Sessions Judge and convicted the accused under Sections 148 and 302, read with Section 149 of the IPC. Hence, this appeal to this Court under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

6. The learned Sessions Judge was mainly swayed by the consideration that PW 11, who was the sole eyewitness and had seen the occurrence, did not immediately disclose the names of the accused to the inmates of the family of the deceased when he went to the house. On this ground alone, the Sessions Judge thought that this was a fatal defect in the prosecution case from which an irresistible inference could be drawn that PW 11 could never have seen the occurrence. We have gone through the evidence of PW 11 and we feel that the Sessions Judge was not at all correct. It was not the case that PW 11 never disclosed the details of the incident to the members of the family of the deceased but when he went to the house he immediately did not name the accused and the explanation given by PW 11 was that as he was completely perplexed he could not disclose the details immediately. The evidence of PW 11 shows that within 15 minutes he disclosed the names of the accused and gave full details of the occurrence. The learned Sessions Judge seems to have taken a most unrealistic view of the evidence of PW 11 by ignoring the fact that he (PW 11) being a guard of the deceased must have been shocked and stunned after seeing the whole incident and, therefore, he may not have been in a position to mention the names of the accused immediately but after composing himself within 10-15 minutes he mentioned the names and also gave all the details. The presence of PW 11 at the scene at the time of the attack on the deceased was not challenged before us. Nor could it be challenged, for the suggestion made to PW 11, which he has denied, that he himself had attacked the deceased. PW 11 appears to be a truthful witness as he himself admits that he could not immediately give the names because he was perplexed and it is quite a natural thing particularly in the case of a person coming from the strata of society of which PW 11 was a member. It is not uncommon for persons when they see a ghastly and dastardly murder being committed in their presence that they almost lose their sense of balance and remain dumbfounded until they are able to compose themselves. This is exactly what may have happened to PW 11.

7. Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge has brushed aside their evidence by presuming that their statements constituting an extra-judicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak of such a confession. In the instant case, after perusing the evidence of PWs 5 and 9 we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed a grave error of law in analysing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds.

8. The matter does not rest here alone but it is clear from the evidence that the accused had made a confession before the police and on the basis of their statements, a blood-stained farsi and a sword were recovered which were found to contain human blood as mentioned earlier. This circumstance, therefore, reinforces both the extra-judicial confession and the evidence of PW 11. The Sessions Judge, however, did not attach much importance to the recoveries which are undoubtedly admissible under the Evidence Act and afford a guarantee to the truth of the prosecution case.

9. Thus, taking an overall picture of the evidence of PWs 5, 9 and 11 and the recoveries of the weapons at the instance of the accused, we are of the opinion that this is an open and shut case against the accused and the learned Sessions Judge has committed error of law and has not properly appreciated the evidence in its true perspective.

10. It was argued by the counsel for the appellants that the Sessions Judge had taken a reasonable view, and the High Court ought not to have interfered. It is true that this Court has held that where two views are reasonably possible, the order of acquittal should not be disturbed. In this case, however, we are fully satisfied that the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on wrong assumptions and, hence, this is a fit and proper case for interference by the High Court in reversing the judgment of the Sessions Judge and convicting the accused.

11. For the aforesaid reasons, we uphold the conviction and sentenced imposed by the High Court and dismiss the appeals. In case the appellants are on bail, they shall surrender to their bail bonds which are hereby cancelled and they should be taken into custody and sent to jail to serve out the remaining portion of the sentence.

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