State of U. P.

Vs

Ballabh Das and Others

Criminal Appeals Nos. 45-47 of 1977

(R.S. Pathak, A.N. Sen JJ)

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

02.08.1985

JUDGMENT

S. MURTAZA FAZAL ALI, J. -

1. These appeals by special leave arise out of a judgment dated December 19, 1975 of the Allahabad High Court by which the High Court reversed the conviction and sentence of the respondents for various offences under Sections 147, 148, 225/149 and 302/149 of the Indian Penal Code and acquitted them of all the charges.

2. The prosecution case is fully detailed in the judgments of the Sessions Judge and the High Court and it is not necessary to cover the same grounds all over again. We would mention only the broad outlines of the case presented by the prosecution before the trial court. The unfortunate dispute in the instant case which resulted in the death of the deceased appears to have been the last step of a drama long in process as a result of a long-standing enmity between the parties for the last twenty-five years.

3. It was contended on behalf of the appellant that the High Court erred in setting aside the conviction of the respondents on the ground that all the witnesses examined to prove the occurrence were interested persons and hence no reliance could be placed on their evidence. To begin with, we dare say that this was doubtless an absolutely wrong and perverse approach. There is no law which says that in the absence of any independent witness, the evidence of interested witnesses should be thrown out at the behest (sic) or should not be relied upon for convicting an accused. What the law requires is that where the witnesses are interested, the court should approach their evidence with care and caution in order to exclude the possibility of false implication. We might also mention that the evidence of interested witnesses is not like that of an approver which is presumed to be tainted and requires corroboration but the said evidence is as good as any other evidence. It may also be mentioned that in a faction-ridden village, as in the instant case as mentioned by us earlier, it will really be impossible to find independent persons to come forward and give evidence and in a large number of such cases only partisan witnesses would be natural and probable witnesses. This Court in Badri v. State of U. P. (AIR 1975 SC 1985 : (1975) 4 SCC 609 : 1975 SCC (Cri) 644) made the following observations : [AIR Headnote] (SCC p. 616, para 6)

> In case where a murder takes place in a village where there are two factions bitterly opposed to each other, it would be idle to expect independent persons to come forward to give evidence and only partisan witnesses would be natural and probable

> witnesses to the incident. In such a case, it would not be right to reject their testimony out of hand merely on the ground that they belonged to one faction or another. Their evidence has to be assessed on its own merits.

4. The High Court has cited this decision and seems to be aware of the view taken by this Court but has, unfortunately, misapplied thus decision while dealing with the evidence produced by the prosecution.

5. The dominant question to be considered in the instant case is whether the witnesses, despite being interested, have spoken the truth and are creditworthy. Once it is found by the court, on an analysis of the evidence of an interested witness that there is no reason to disbelieve him then the mere fact that the witness is interested cannot persuade the court to reject the prosecution case on that ground alone.

6. The entire edifice of the prosecution, in the instant case, depends on the evidence of PWs 1, 5, 8 and 14. We have persuade their evidence and we unable to find any serious infirmity or inherent improbability in their evidence.

7. On a perusal of the judgment of the High Court, it seems to us that it has dealt with other circumstances in a rather summary fashion but the central idea which weighed with the High Court while acquitting the accused was that as the eyewitnesses were interested and nit independent, it was not safe to convict the accused, on the other hand, a perusal of the trial court's judgment clearly shows that each and every circumstance or criticism against the prosecution has been fully met with facts and figures. The trial court has made a very elaborate and detailed analysis of the entire evidence before coming to the conclusion that the prosecution case was fully proved. The High Court does not seem to have displaced the important circumstances refereed to or relied upon by the trial court but has in a general way rejected to prosecution case. The High Court seems to have relied, firstly, on the long-standing enmity and, secondly, on certain discrepancies which are not of a very vital nature and which can be found in any criminal case. This Court has observed in its various decisions the at the duty of the court is to separate truth from falsehood and the chaff from the grain.

8. While rejecting the evidence of PWs 1, 5, 8 and 14 on the ground that they were interested witnesses, the High Court observed thus :

> Having thus considered all these points raised on behalf of the appellants, the vital question would be whether in these circumstances the statements of the eyewitnesses should be believed. The learned Sessions Judge seems to have concluded that there was nothing to show that these eyewitnesses and any interest in falsely implicating the accused persons. This remark of the learned Sessions Judge is contrary to his earlier observations according to which, these eyewitnesses were interested in the deceased and at least two of them, namely, Aditya Narain and Jokhai Das were hostile to the accused persons.
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> Having thus considered the entire evidence and the circumstance and probabilities, we are of the opinion that because all the eyewitnesses are interested persons and because they had not been able to relate a consistent and convincing story, it would

not be possible to arrive at a finding of conviction.

9. In order to illustrate our point of view, we may have to wade through parts of the findings giving by the to courts. The trial court after a very scientific marshalling of evidence observed thus :

> The position that follows is that from the statements of the eyewitnesses and Ramesh Chand Verma it is fully established that the occurrence took place on June 13, 1974 at 5 p.m. There is no material on record to indicate that occurrence took place in the night and in the absence of Aditya Narain, Jokhai Das and others.

10. As regards the recovery of 'Jareeb' (scale for measuring the field) and 'basta' (bag), the trial court after consideration of entire evidence came to the following finding :

> In view of the above, I have absolutely no doubt as to the recovery of 'Jareeb' (a scale for measuring the field) and 'basta' (bag) by the investigating officer as alleged.

11. As regards the snatching of pistol from Ghanshyam Das, the trial court found that Aditya Narain may have snatched the pistol in the heat of the moment. The learned Judge, however, pointed out that if the other assailants did not take back the pistol from Aditya Narain, no element of improbability could be imported into this fact.

12. The High Court has made capital of the fact that there were three lacerated wounds on the head of the deceased and under these would there was a long fissured fracture of frontal, parietal and temporal bones; and yet the prosecution case is that there was no assault by lathi. It is manifest that if Ranjit Ram was assaulted with lathi by Salik Ram and Rajdhar (accused) and the post-mortem report proved this fact then this fact conclusively shows that Ranjit Ram was also assaulted with lathi and the mere fact that the assault by lathi was not mentioned in the FIR would not be sufficient to dislodge this important fact. It is manifest that an FIR is not intended to be a very detailed document and is meant to give only the substance of the allegations made and, therefore, the absence of the mention of a lathi would not put the prosecution case out of court.

13. The High Court relied on the circumstance that the injury of PW 14 (Jokhai Das) must have been written by the doctors at the instance of or under the influence of Shri Salig Ram Jaiswal, Health Minister. This is also a conclusion based on pure speculation. It is true that Shri Salig Ram Jaiswal, the Health Minister was admitted to T.B. Sapru Hospital on April 27, 1974 and discharge on May 30, 1974. From this, the inescapable conclusion is that it cannot be said that the doctors wrote false injury report of Jokhai Das.

14. The High Court adversely commented regarding the number of shots fired at Ranjit Ram. This fact is clearly proved from the statement in the FIR that Brahma Das, Ballabh Das and Ghanshyam Das took out pistol from the waistbands of their dhotis and all of a sudden fired 6-7 times upon Ranjit Ram, the pistol of Ghanshyam Das misfired and Ranjit Ram fell down and that Aditya Narain and others snatched the pistol from Ghanshyam Das. We do not find any infirmity in this statement as rightly pointed out by the trial court. The trial court has held that on a consideration of the material it had been established that at least three shots were suddenly fired out of which one shot misfired and the other two shots had injured Ranjit Ram. We find no improbability in this part of the prosecution case, which has been adversely commented upon by the High Court.

15. We have given a few illustrations of the reasons given by the High Court for reversing the judgment of the trial court and any knowing person who examines these reasons will be convinced

that merely because of certain omissions or contradictions, the entire case cannot be thrown out.

16. We have ourselves very carefully perused the judgment of the High Court and except for small discrepancies here and there we do not find any reason why the High Court should have interfered with the detailed and exhaustive analysis of the evidence made by the trial court which had the initial advantage of watching the demeanour of the witnesses while they were giving evidence. We are, therefore, clearly of the opinion that the judgment of the High Court is absolutely wrong and it has laid great importance on small or insignificant facts or discrepancies and was mainly influenced by the fact that no independent witness was examined by the prosecution, about which we have already discussed above.

17. For these reasons, we are satisfied that this is not a case in which the view taken by the High Court can in any sense of the terms be called 'reasonable'. This is a clear case where the High Court gravely erred in interfering with the judgment of the trial court.

18. The next question for consideration is, after having been convinced that the prosecution has proved its case beyond reasonable doubt, what is the sentence which is to be imposed on the respondents ? In the facts and circumstances of the case, we feel that imposition of the extreme penalty of death is not called for and the ends of justice would be met by commuting the death sentence to imprisonment for life.

19. Therefore, we allow these appeals, set aside the judgment of the High Court and convict all the accused under Section 302/149 of the Indian Penal Code and sentence them to imprisonment for life. In case the respondents are on bail, their-bonds are hereby cancelled and they shall be taken into custody and sent to prison for serving out the sentence imposed.

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