

State of U. P.

Vs

Satish Chandra and Others

Criminal Appeals Nos. 316-318 of 1977

(A. N. Sen, Ranganath Misra JJ)

25.09.1985

JUDGMENT

RANGANATH MISRA. -

1. These appeals are directed against a common judgment of acquittal passed by the High Court of Allahabad after obtaining special leave.
2. Prosecution alleged that the five accused persons (respondents) had caused death of Raaz Mohammad on April 20, 1973, in the Sweepers' Colony within Gorakhpur city. The first information report was lodged within half an hour of the incident.
3. At the trial, PW 1 was the only witness who supported the prosecution case. Rahim Khan (PW 1) and the deceased were Afghan nationals and were carrying on business of money lending. PW 1 was also working as a hawker of cloth. The deceased was his nephew. Both of them lived in Gorakhpur for about five years before the occurrence. According to the prosecution respondents had already taken some loan from the deceased and wanted further loans. When the deceased refused to oblige, Satish stabbed him with a knife in the stomach. After the deceased fell down, two of the accused respondents caught hold of him by his legs and the other two held him by hands and Satish gave further blows with the knife, as a result of which he died. The learned trial Judge accepted the evidence of PW 1 and found support from the circumstances as indicated in his judgment; he accordingly convicted Satish under Section 302 of Indian Penal Code and imposed the sentence of death. The other accused persons were convicted under Sections 302/49 of IPC and were given imprisonment for life. All the respondents, except Satish, were convicted under Section 147 and Satish under Section 148, IPC.
4. On appeal, the High Court took the view that the evidence of PW 1 that he knew the respondents was not acceptable. The circumstances on which the trial court had based the conviction were not available to be relied upon according to the High Court. It also referred to an application forthcoming from the record where request had been made for holding an identification on the plea that PW 1 did not know the respondents. It appears that no orders were passed on that petition and no identification was carried out. The High Court, therefore, held that the prosecution had not been successful in establishing the guilt of the respondents. The conviction was set aside and acquittal followed.
5. The facts of these appeals depend upon the appreciation of evidence of PW 1. This witness according to his testimony had accompanied the deceased when the incident took place. He stated that he had come to know the respondents on account of the fact that the respondents had money-

lending transactions with the deceased PW 1 in his cross-examination admitted : "I do not know where Satish Dubey accused lived at the time of the occurrence, but I had seen him visiting the Sweeper's Colony along with other accused persons I do not know where Suraj Sharma was living at that time. I do not also know where the other accused persons live. I never went to their houses. I never had any talk with these persons". From these statements in cross-examination the High Court came to hold that acquaintance of PW 1 with the respondents was not established. We do not think the conclusion of the High Court is open to challenge. So far as the assessment of the evidence of PW 1 is concerned Mr. Tiwari, learned counsel for the appellant, relied upon the evidence of PW 6. This witness was approached by PW 1 for scribing the first information report and the report was written on the road as stated by the witness. According to him when he reached the spot after scribing the first information report, he heard people saying that the respondent Satish had assaulted the deceased and had run away from the spot. We do not think the evidence of this witness can be used by the prosecution to any appreciable extent.

6. It is not necessary in law that more than one witness should be examined to prove a fact but unless the witness is very reliable, the court would ordinarily look for corroboration. PW 1 is admittedly a close relation of the deceased and he is a stranger so far as the accused are concerned. Unless there is satisfactory evidence to implicate the accused persons in the crime, it would be difficult to hold that the accused persons had really caused death of the deceased. While all other particulars relating to the prosecution case may not be disputed, as held by the High Court, the authorship of the crime had been in dispute and the prosecution has to fail as it has not established that fact. If the link between the incident and the respondents is not established, the High Court was justified, the High Court was justified in acquitting them.

7. We are of the opinion that the acquittal by the High Court in such circumstances is not open to attack. The appeals fail and are dismissed. The order of acquittal passed by the High Court is upheld. The respondents are already on bail; their bail bonds are cancelled.

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