

State of Uttar Pradesh

Vs

Ranjha Ram and Others

Criminal Appeals Nos. 94 To 96 of 1978

(M. M. Thakkar, S. Natarajan JJ)

19.08.1986

JUDGMENT

NATARAJAN, J. –

1. These three appeals by special leave by the State of Uttar Pradesh are directed against a common judgment rendered by the Allahabad High Court in Criminal Appeal No. 896 of 1975, Referred Case No. 35 of 1975 and connected Criminal Appeals Nos. 892 and 893 of 1975. For the sake of convenience we will refer to the respondents in the three appeals in the order of their array in the Sessions Court. The respondents in the three appeals are respectively accused 1, 16 and 2; accused 3 to 12 and 17 to 19; and accused 13 to 15.

2. All the 19 accused were convicted by the Additional Sessions Judge, Kumaun for offences punishable under Sections 302 read with Section 149, 396, 201 read with Sections 149, 148 and 147 Indian Penal Code. Accused 1, 2 and 16 were sentenced to death and the rest of the accused were sentenced to imprisonment for life for the conviction under Section 302 read with Section 149 IPC. For the conviction under Section 396 IPC all the accused except accused 13 to 15 were sentenced to pay a fine of Rs. 500. For the convictions under Sections 147, 148 and 201 read with Section 149 IPC no separate sentences were awarded. The 19 accused preferred three appeals viz, Criminal Appeal Nos. 896, 892 and 893 of 1975 against their convictions and sentences and the Sessions Judge made a reference under Section 366 IPC for confirmation of the death sentence awarded to accused 1, 2 and 16. The High Court allowed all the appeals and dismissed the reference and set aside the convictions and sentences and set the accused at liberty. Against the common judgment of the High Court, the State has preferred these appeals.

3. All the accused persons except accused 12, 13 and 14 trace their ancestry to a common ancestor by name Jamuna Ram. Accused 13 is the daughter-in-law of accused 15 and accused 14 is the wife of accused 6. Accused 12 is the maternal uncle of accused 18. Of the two deceased, Kesho Bai was the daughter of the common ancestor Jamuna Ram and the other deceased Shital Das was her husband.

4. Notwithstanding the relationship between the accused and the deceased they were on inimical terms for a number of years. The enmity arose on account of one Tribeni Das Bhagat, son of the common ancestor Jamuna Ram giving 5 acres of land in Village Jogipur and another 5 acres of land in Village Gobra to his sister Kesho Bai (deceased) and her husband Shital Das (deceased). Mithoo Ram, the father of accused 1 and 16 wanted the lands for himself and hence he is said to have murdered Tribeni Das Bhagat. Thereafter Mithoo Ram and his sons turned their wrath on Shital Das and Kesho Bai. They falsely implicated Shital Das in a case of murder and the case ended in

acquittal. They then attempted to murder Shital Das and Kesho Bai and two cases were registered under Section 307 IPC and they were pending trial. There were also proceedings under Section 107 CrPC against accused 1, 16, 17 and some others. Besides there were several other criminal cases between the deceased and the accused.

5. The fatal attacks on Shital Das and Kesho Bai took place on October 26, 1973. Two or three days earlier accused 1, 3 and 16 to 18 had come out of prison on parole. On the day of occurrence, at about 2.30 p.m. Shital Das and Kesho Bai and two of their sons Ram Swarup (PW 1) and Ram Kishore (PW 6) were in the hut of Shital Das. Their another son, Ram Das (PW 7) was outside the hut. At that time accused 13 to 15 went to the hut of Shital Das and told him that they had come to seek a compromise with him. Two or three minutes later accused 1 followed by the other accused reached the hut of Shital Das. Accused 1 was having a DBBL gun and accused 2, 3, 8, 11, 17 and 18 were having guns with single barrel. Accused 4 to 6 had kirpans and accused 7, 8, 9 and 19 were having lathis.

6. After putting Shital Das off guard by the alleged compromise talk accused 15 managed to remove his DBBL gun and a belt of cartridges kept on the cot and passed them on to accused 16. When Shital Das tried to retrieve the gun accused 16 shot him on his thigh. Shital Das fell down and at once accused 2, 17, 18 and some other accused caught hold of him and dragged him out of the hut. Seeing the attack on her husband Kesho Bai took her young child and ran outside. Accused 2 fired his gun at her and the gun shot hit Kesho Bai on her hand. Kesho Bai ran into the hut of one Karma Ram. Accused 1, 2, 4, 11 and 19 chased her to the hut and shortly thereafter there were two gun shots. Some of the accused viz. accused 5, 6, 8, 9, 16 to 18 dragged Shital Das to a nearby field and attacked him with lathis and kirpans. Accused 1, 2, 4, 11 and 19 brought the dead body of Kesho Bai from Karma Ram's hut. The dead bodies of Shital Das and Kesho Bai were wrapped up and tied to lathis and carried towards the river Koshi. Accused 12 and one Phul Chand (who is not an accused) followed the dead bodies with axes in their hands. Accused 5 and 6 removed the blood-stained earth and put it in a jhola.

7. The entire occurrence was witnessed by PWs 1 and 6 (sons of the deceased). The other son PW 7 who was standing outside saw the accused going towards the hut in a body with weapons in their hands. Within a few minutes he heard the noise of gun shots. Apprehending danger to the members of his family he ran to Bazpur Police Station about 8 miles away to inform PW 11, Head Constable about the activities of the accused. PW 11 would not take notice of PW 7 and chased him away. Thereupon PW 7 went to the shop of one Daya Nand and got a report Ex. Ka-7 written by Prem Chand, son of Daya Nand and took the report to the police station and presented it at 4.00 p.m. Even then PW 11 refused to take serious note of the report and hence he merely made an entry in the General Diary and sent two constables to the village to make their appearance there.

8. PW 12 the Station Officer, returned to the police station at 6.00 p.m. and after perusing the General Diary he left for Bangarh Village to find out what the matter was. After his departure, PW 1 reached the police station and gave a report Ex. Ka-1 at 9.10 p.m. On the basis of Ex. Ka-1 an FIR was prepared and a case was registered.

9. On the next morning PW 1 gave PW 12 a list of property viz. jewels, gun and wristwatch carried away by the accused after committing the murders. PW 12 recovered 3 empty cartridges, wads, ticklis, pellets, bloodstained plant etc. from the field near the hut of Shital Das as well as a cartridge and 5 pellets from the hut of Karma Ram.

10. On October 28, 1973 PW 12 arrested Daulat Ram, accused 12 and questioned him. Daulat Ram got into river Koshi and brought out portions of the left foot and right leg of a human being and 21 broken pieces of bangles. The portions of the left foot and right leg were identified as those of Shital Das and the bangle pieces were identified as those of Kesho Bai.

11. On the basis of such materials the 19 accused were charged under various heads and tried by the Sessions Judge. The defence of the accused was that they were innocent and the cases had been foisted against them due to enmity.

12. Four witnesses viz. PWs 1, 6, 7 and 8 were examined as direct witnesses to the occurrence but the Sessions Judge declined to give credence to the evidence of PW 8. He, however, held that PWs 1, 6 and 7 though the sons of the deceased victims, were truthful witnesses and their evidence was fully worthy of acceptance. Consequently, he awarded convictions and sentences to all the 19 accused as set out supra. The High Court has, however, taken the view that the evidence of PWs 1, 6 and 7 failed to evoke 'implicit' acceptance and hence even though there was strong suspicion that many of the accused persons should have participated in committing the murders of Shital Das and Kesho Bai, the accused deserved to be acquitted.

13. Mr Prithvi Raj, learned counsel for the appellant, in the course of his arguments, took us through the evidence of PWs 1, 6 and 7 and relevant portions of the evidence of the other witnesses and also the contents of Exs. Ka-1 and Ka-7 and contended that the evidence on record fully established the guilt of the accused and as such the High Court was wholly unjustified in acquitting the accused. In reply, Mr P.P. Juneja, learned counsel for the respondents argued that the High Court had reappraised the evidence, as it is entitled to do, and had found the prosecution evidence to suffer from infirmities and had therefore rightly set aside the convictions and hence the Judgment should receive acceptance at our hands.

14. On a careful consideration on the evidence on record and the arguments of the learned counsel for the appellant and the respondents, we find the High Court has not only failed to view the evidence in its proper perspective but has also set unrealistic standards to evaluate the testimony. And this unsustainable approach has vitiated the reasoning and the conclusion of the learned judges. It is not disputed that Shital Das and Kesho Bai had been brutally done to death on October 26, 1973 by the use of fire-arms and other weapons. Not satisfied with killing the victims, the assailants had also dismembered the limbs and thrown them in the river Koshi. Two days later, at the instance of PW 12 portions of the left foot and right leg of a human being were recovered from the river Koshi and they were identified as parts of the lower limbs of Shital Das on the basis of certain identification marks. Though Kesho Bai's body or dismembered limbs could not be traced the 21 broken pieces of bangles that were recovered clearly proved that her body had also been thrown into the river by the murderers.

15. Only those persons who had a strong motive to exterminate Shital Das and Kesho Bai would have murdered them and disposed of their bodies in the river. The record contains ample material to show that the leading members of the accused party had earlier made attempts on their lives. Since those attempts had failed, accused 1, 3 and 16 to 18 who had come out on parole just 2 or 3 days earlier would appear to have taken several of their close relations and attacked the victims on the day in question.

16. As regards the occurrence, PWs 1, 6, 7 and 8 have given evidence but since the trial court and the High Court have not given credence to the testimony of PW 8 we may eschew his evidence from

consideration. The remaining three witnesses are no doubt the sons of the deceased but it is needless to say that their evidence does not lose credibility on that score. Their evidence has only to be scrutinised with greater care in order to find out whether it suffers from embellishments or exaggerations due to interestedness. The High Court has unfortunately failed to judge the evidence of PWs 1, 6 and 7 by this well accepted standard. On the other hand, it has set new standards and sought for materials which would merit implicit acceptance at its hands. In more than one place the High Court has observed "that implicit reliance" cannot be placed on the evidence of PWs 1, 6 and 7. This unsustainable approach insisting on "implicit proof" instead of "proof beyond reasonable doubt" has blurred the vision of the High Court to the irrefutable materials contained in the evidence of PWs 1, 6 and 7.

17. From the evidence, we find that PW 7 who was standing outside the hut had seen the accused approaching the place with guns in their hands. Soon after he also heard the noise of gun shots inside the hut. He had at once run to Bazpur to seek the intervention of the police authorities. PW 11 had unfortunately exhibited indifference and had chased him away. Even then PW 6 had got a report Ex. Ka-7 written by one Daya Nand and presented it at the police station at 4.00 pm PW 11 did not take the report seriously and hence he merely made an entry in the General Diary and sent two or three constables to the village to make their presence felt there. PW 7 has clearly mentioned the names of 15 accused persons and has failed to mention only the names of accused 12 to 15. Since PW 7 was outside the hut and since he had run to the police station as soon as he heard the noise of gun shots, it would not have been possible for him to make a detailed report with full and minute particulars. The fact, however, remains that even at 4.00 pm a report had been given about 15 accused persons going in a body and armed with weapons to the hut of Shital Das and about gun shots being fired. The High Court, instead of noticing the prompt manner in which Ex. Ka-7 had been given, has instead rejected it because its contents did not fully accord with the evidence of PWs 1 and 6 regarding the 'sequence' of events. What is of significance is that Ex. Ka-7 contains the names of 15 accused persons and an entry had been made in the General Diary at 4.00 pm itself about the receipt of Ex. Ka-7.

18. Insofar as the evidence of PWs 1 and 6 are concerned it is no doubt true that PWs 6 is a child witness, being aged only 11 years. However, his evidence is not at variance with the evidence of PW 1 who is a grown up person. The Sessions Judge has found the witness to be truthful and consistent. PWs 1 and 6 have stated clearly that the women accused (13 to 15) were followed by the other accused and accused 16 shot Shital Das on his thigh and then the rest of the accused dragged him out and attacked him with various weapons. When Kesho Bai attempted to run away she was also shot and then chased and killed in the hut of Karma Ram. As the accused had come in a large body and attacked the victims in quick succession it will be futile to expect a vivid description of the details of attack on the victims. Moreover, the attack on Kesho Bai had taken place inside Karma Ram's hut and as such PWs 1 and 6 could not have known in what manner she was attacked by her pursuers. The High Court has rejected the evidence of PW 6 for trivial reasons and has even gone to the extent of doubting his presence inside the hut of Shital Das without realising that a young boy like PW 6 would have more likely been in the house with his parents at 2.30 pm than elsewhere when they were attacked.

19. As regards the evidence of PW 1 we find that his evidence is not only natural and truthful but also consistent. After witnessing the gruesome attack on his parents he had gone to the police station and given a report Ex. Ka-1 at 9.10 pm The report is fully in conformity with the evidence given by him in court. The High Court has entertained doubts about Ex. Ka-1 being given at 9.10 pm and has felt that the report is likely to have been given the next morning and subsequently the date must

have been corrected to October 26, 1973. There is no warrant for this surmise, because the High Court itself has noticed that in the original viz. Ex. Ka-1 there is no correction of the date and furthermore the police officer has put his signature in that report in more than one place under dated October 26, 1973. Over and above these features when Ex. Ka-7 containing the names of accused 1 to 11 and 16 to 19 had been given at 4.00 pm itself and an entry had been made in the General Diary, there is no scope for surmising that there should have been confabulation on the night of October 26, 1973 and only in the morning Ex. Ka-1 should have been given and subsequently the date would have been corrected to October 26.

20. We find there was no warrant at all for the High Court to reverse the judgment of the Sessions Court, which is analytical and well-reasoned. The reasoning of the High Court is manifestly unreasonable and unsustainable and hence the appeal has to be allowed.

21. Notwithstanding this conclusion we are of opinion that the case of accused 12 to 15 stands on a different footing from that of the other accused because their names do not find a place in the earliest record Ex. Ka-7. The eye-witnesses have not also attributed any overt acts to any one of these accused. The Sessions Judge has overlooked these features while awarding convictions to these 4 accused along with the 15 others. The taking out from the river of portions of legs of Shital Das and the broken bangles of Kesho Bai by accused 12 cannot make him one of attackers of the deceased when there is no reference to him in Ex. Ka-7 and Ex. Ka-1 and when the eye-witnesses do not also speak about his being one of the assailants of the victims. Hence the conviction of accused 12 to 15 by the Sessions Judge cannot be sustained and consequently their acquittal by the High Court will have to stand.

22. As regards the other accused viz. accused 1 to 11 and 16 to 19, their convictions under Sections 302 read with Section 149, 396, 201 read with Sections 149, 148 and 147, Indian Penal Code by the Additional Sessions Judge, Kumaun will stand restored. We do not think that at this distance of time the sentence of death should be reimposed on accused 1, 2 and 16. We, therefore, sentence them and the other convicted viz. accused 1 to 11 and 16 to 19 to undergo imprisonment for life for the conviction under Section 302 read with Section 149, Indian Penal Code. In view of this sentence we are not awarding separate sentences for the convictions under the other heads.

23. In the result, Criminal Appeal No. 94 to 1978 will stand allowed, Criminal Appeal No. 95 of 1978 will stand allowed as against all the respondents except accused 12 (respondent 10) and Criminal Appeal No. 96 of 1978 will stand dismissed.

24. Accused 1 to 11 and 16 to 19 will be rearrested and placed in the prison to serve out the remaining part of the sentence of life imprisonment awarded to them.

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