Narendra Singh

Vs

State of U. P.

Criminal Appeal No. 209 of 1978

(G. L. Oza, V. Khalid JJ)

10.03.1987

JUDGMENT

G. L. OZA, J. -

1. This appeal arises out of conviction of the appellant under Section 302 IPC and sentence of imprisonment for life awarded by the High Court of Allahabad in an appeal against acquittal preferred by the State against the acquittal of the appellant from the charge under Section 302 by Sessions Judge Kumaon.

2. The facts necessary for this appeal are that on November 7, 1970 at 4.15 p.m. Narendra Singh, respondent, inflicted injuries with his kirpan on Govind Singh on the Ranikhet road in front of the shop of Govind Singh Mystri in Ramnagar town. Shri Phool Chand Sinha, Vice President of the Ram Nagar Municipal Board who was at that time checking the thelas, seeing the incident ran towards at appellant Narendra Singh and succeeded in recovering the weapon of assault i.e. Kirpan from him. He also caught hold of the head of Narendra Singh but could not succeed in apprehending him as his turban remained in the hand of Shri Sinha and Narendra Singh escaped.

3. Pratap Singh, PW 6, Ishwar Datt PW 7 and some other persons also witnessed the assault. Govind Singh after receiving injuries ran from the scene but fell down at a short distance in front of the tea shop of Parmanand Pandey. PW 4 Govind Singh was carried on a thela to the hospital where Dr. Harish Chand Pant PW 2 examined the injuries of Govind Singh at 4.30 p.m. and prepared an injury report. Fifteen minutes later, Govind Singh who was unconscious, died.

4. Phool Chand Sinha, PW 1 went to the Police Station Ram Nagar and lodged a report about the incident. Head Constable Om Pratap Singh recorded the report registered a case against the Sardar Narendra Singh at 4.50 p.m. The police station was at a distance of about one furlong from the scene of occurrence. The Kirpan and the turban of the assailant were also deposited at the police station by Phool Chand Sinha. Sub-Inspector Shri T. N. Rawat, PW 10 who was present at the police station took up the investigation and went to the hospital. After investigation, a charge sheet was field. On trial the learned Sessions Judge acquitted the appellant discarding the testimony of eye-witnesses on the basis of minor discrepancies in details and on imaginary considerations.

5. Against this order of acquittal recorded by the learned Sessions Judge, the State preferred an appeal and the High Court after considering the reasons on the basis of which the direct testimony was discarded by the learned Sessions Judge found those reasons to be not only inadequate but not appropriate and consequently reassessed the evidence and came to the conclusion that the testimony of eye witnesses is such which could not be discarded, convicted the appellant and sentenced him as

mentioned above. It is how this appeal is before us.

6. Learned counsel appearing for the appellant contended that the learned Sessions Judge after scrutinising the evidence came to the conclusion that the evidence was not sufficient to establish the offence against the appellant whereas the learned Judges to the High Court after re-appreciating the evidence came to a contrary conclusion. It was contended that if on the evidence two opinions are possible merely on that ground the acquittal recorded in favour of the appellant could not have been set aside by the High Court.

7. It was also contended that the reasons stated by the learned Sessions Judge while discarding the testimony of eye witnesses were good reasons and therefore the view taken by the High Court does not appear to the correct. Lastly it was contended that even if the evidence is accepted yet it is silent about the manner in which the incident began, the possibility that there was some hot exchange between the parties and in the heat of passion the injuries were inflicted on the person of the deceased, consequently at the best the appellant could be convicted for an offence under Section 304 Part I and not for an offence under Section 302 IPC.

8. The learned Judges of the High Court considered the reasons on the basis of which learned Sessions Judge chose to discard the evidence of eyewitness. The learned Judges had even quoted passages from the judgment of the Sessions Judge and found that the view taken by the learned Sessions Judge is not reasonable and could not be justified.

9. It is not disputed that there were three eyewitness of the incident PW 1 Phool Chand Sinha PW 6 Pratap Singh, PW 7 Ishwar Datt and Parmanand Pandey PW 4, though he is not an eye-witness but he reached the scene immediately after the incident and his testimony corroborates the version given out by the eye-witness.

10. It is significant that Phool Sinha, PW 1 who is the Vice-President of the Municipal Board and an absolutely uninterested person who happened to be present on the scene of occurrence is not only an eyewitness but within about 15 minutes of the incident he has lodged the first information report at the police station where he has named the assailant and described the incident. It appears that the view of this circumstances alone when there is nothing in the cross examination of this witness on the basis of his testimony could be discarded learned Sessions Judge went on at length to consider as to whether an old and weak man like him will dare to catch hold of assailant who was carrying a kirpan and therefore inferred that this story that he attempted to catch hold of the assailant itself makes the prosecution story unbelievable. It is rather unfortunate that the learned Sessions Judge went on considering this question when the fact remains that he deposited the kirpan and the turban of the assailant at the police station, a fact which goes a long way in corroborating the testimony of this witness. There is nothing to indicate that he had any interest in the matter. His cross examination disclosed that he knew the assailant from before and therefore the question of identification is of no consequence. In the first information report lodged by this witness, he named the assailant which clearly goes to show that in case of this kind, the question of identification is not of much consequence and what appears in his evidence about the mistake in identification in the committal court is clearly explained by him. In our opinion the learned Judges of the High Court were right in coming to the conclusion that the evidence of this witness alone is such which is sufficient to come to a conclusion about the guilt of the appellant. Apart from it the learned Judges of the High Court have considered the other evidence as well.

11. Having gone through the two judgments one by the learned Sessions Judge and the other by the

High Court and having gone through the evidence in the case, we have no hesitation in coming to the conclusion that the reasons on the basis of which the learned Sessions Judge attempted to discard the prosecution evidence were not at all reasons on the basis of which the any evidence could be discarded and therefore the learned Judges of the High Court were right in reassessing the evidence themselves. It is not a case where on appreciation of evidence, two views are possible. In fact the view taken by the learned Sessions Judge is not a view which ordinarily a reasonable man would take. In this view of the matter it is not even necessary for us consider as to whether is an appeal against acquittal, the High Court can arrive at a different conclusion when in a case where two opinions are possible. As observed earlier the conclusion reached by the learned Sessions Judge was such which reasonably could not be arrive at. In this view of the matter so far as the facts are concerned, the High Court is right in coming to the conclusion that the prosecution case has been established beyond doubt.

12. As regards the offence, the contention of the learned counsel for the appellant was that as the evidence of eyewitness indicate, especially the evidence of Phool Chand Sinha, PW 1, that he saw when the deceased was being attacked by the assialant and on this basis it was suggested that there might have been some hot exchange between the parties which might have raised the passion and it might be in the heat of passion that the appellant inflicted injuries. Dr. Harish Chand Pant who examined the injuries on the person of the deceased found the following injuries :

> (1) Penetrating incised wound, 2 cm x 1 cm x deep in the lung, statutory downwards and forwards, 17 cm below the right anterior axillary fold.
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> (2) Penetrating incised wound 2.5 cm x 1 cm x deep in the heart region, 1/2 cm below the left nipple.
>
> (3) penetrating incised wound 2.5 cm x 1 cm x abdominal cavity deep on the abdomen, right side, 1 cm above and towards right from umbilicus.
>
> (4) Incised wound, 2.5 cm x 1 cm x deep to the palm on the dorsem of the left hand, 1 cm above the base of middle finger.

These injuries found by the doctor clearly discloses that the assailant went on giving blows with his kirpan, a sharp edged weapon on part of the body where vital organs are situated and ultimately the result is achieved i.e. the deceased is dead. It is not a case where a blow was inflicted in the heat of passion. In the circumstances like this where there are repeated blows on the vital parts of the body, it could not be said that the appellant committed an offence other than Section 302. In our opinion therefore the High Court was right in convicting the appellant for an offence under Section 302 IPC. The sentence awarded is only imprisonment for life. Consequently the appeal is dismissed and the conviction and sentence passed against the appellant are maintained.

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