

Babu Lodhi and Others

Vs

State of U. P.

Criminal Appeal No. 286 Of 1978

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

01.04.1987

JUDGMENT

S. NATARAJAN, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Allahabad partly allowing Appeal No. 3045 of 1972 and setting aside the acquittal appellants herein and convicting them under Section 302 Section 34 Indian Penal Code under two counts and sentencing them to imprisonment for life under each count for committing the murders of one Ram Nath and his father Bhagwan Das on the afternoon of July 24, 1970 at village Chandwari Police Station Jaria, District Hamirpur. There was another accused by name Kallu who was also acquitted by the Session Judge, Hamirpur but the High Court has affirmed his acquittal under Section 302 read with Section 109 Indian Penal Code.

2. The three appellants and Kallu were charged for having committed the murders of Ram Nath and Bhagwan Das by the first appellant attacking them with an axe and the second and third appellants attacking them with spears at the instigation of Kallu to commit the murders. The motive for the attack is said to be that about one year before the occurrence there was a theft of the licensed gun of Bhagwan Das and a complaint therefor had resulted in Kallu being apprehended and charged for committing the theft of firearm. The first appellant interceded on behalf of Kallu and requested Bhagwan Das and Ram Nath to compound the offence but they pleaded inability on the ground that they had no say in the matter as it was a case taken on file on a police report. Another cause of provocation proximate in nature was that on the previous day the first appellant was prevented by Bhagwan Das and Ram Nath from taking their buffalo to the cattle pound for being impounded.

3. On the day of the occurrence Bhagwan Das and Ram Nath had their midday meal and left the house for making coir rope out of hemp. Shortly after they had left the house Ram Nath's wife Smt. Koshi (PW 1) heard the alarm of her husband and rushed out of the house to see what the matter was. She saw Ram Nath being attacked near the house of one Lachchi Ram, brother of deceased Bhagwan Das (PW 3) and Uioari (not examined). According to Anant Ram. Kallu instigated the appellants to attack Ram Nath but this exhortation is not spoken to by Smt. Koshi and there was also no reference to it in the FIR, Ex. Kha-1 given by her. It was on account of this Kallu was acquitted by the Sessions judge and the High Court too has declined to interfere with this acquittal. The three appellants repeatedly attacked Ram Nath with their respective weapons and even after he had fallen down they continued their attack for some time. After their brutal attack the appellants left the place saying they must deal with Bhagwan Das also. After the appellants left the place Smt. Koshi rushed near her husband and found life to be extinct. Feeling apprehensive of the safety of the father-in-law Bhagwan Das, She ran towards the Rahania and found at a place about 80 paces away the three

appellants launching an attack on Bhagwan Das also with their respective weapons. Besides Smt. Koshi the attack on Bhagwan Das was witnessed by two other witnesses Jagan Nath (PW 2) and Prabhu (PW 4). These two witnesses who belong to the same caste of Lodhis as the first appellant failed to implicate the first appellant in the attack on Bhagwan Das and hence they have been treated as hostile witnesses and cross-examined. After completing their attack on Bhagwan Das the appellants ran away from the scene carrying their weapons. Bhagwan Das too met with an instantaneous death on account of the numerous injuries inflicted upon him by the appellants.

4. As it was evening time and as Jaria Police Station was 14 miles away no one was prepared to take the risk of going to the police station during night time to give a report about the attacks on the deceased. On the next morning Smt. Koshi managed to secure a bullock-cart and placed both the dead bodies in the said cart and proceeded to the Police Station Jaria alongwith a number of persons. She gave a report Ex. Kha-1 at about 4.30 p.m. and thereupon a case was registered against the appellants and Kallu.

5. After inquests were held the dead bodies were sent for autopsy. Dr. Jaidka (PW 10) conducted the autopsy on Bhagwan Das's dead body at 12.10 p.m. on July 26, 1970 and the autopsy on Ram Nath's dead body at 2.45 p.m. on the same day. On Bhagwan Das's dead body there were 18 injuries of which injuries 1, 4, 6, 7, 8, 12 were contused wounds, injury 2 was an incised wound, injuries 3, 5, 10 and 13 to 18 were punctured wound and injury 9 was an abrasion. Internal examination revealed that the peritoneum was ruptured in the abdominal cavity. Death was certified to be due to shock and hemorrhage resulting from the injuries caused to the head, mouth, face and the abdomen. On Ram Nath's dead body there were 13 injuries of which injuries 1, 5, 6, 7, 9 and 13 were incised wounds, injuries 10, 11 and 12 were punctured wounds and the others were abrasions or abraded contusions. Internal examination revealed that the fourth, fifth and sixth cervical vertebrae were cut, the spinal cord was also cut at the level of the fourth, fifth and sixth vertebrae and that the peritoneum was ruptured. Death was due to shock and hemorrhage as a result of the injuries caused to the mouth, face and abdomen. The injuries on both the dead persons were certified to be sufficient in the ordinary course of nature in cause death.

6. The investigation of the case was conducted by Chandrama Tiwari (PW 11), Ramesh Chandra Sharma (PW 9) and Chottey Lal Tripathi (PW 6). The appellants and Kallu were searched for but they were not available but eventually they were traced and arrested. After completion of the investigation charge-sheet was laid against the appellants and Kallu.

7. The Session Judge acquitted the appellants and Kallu on the ground that the prosecution had failed to prove adequate motive for the occurrence, that Smt. Koshi could not have witnessed the attack on both the deceased persons, that Anant Ram was an interested witness, that Jagan Nath and Prabhu had failed to fully support the prosecution case, that the occurrence must have been witnessed by independent witnesses also and their non-examination aroused suspicion and that the medical evidence was suggestive that Ram Nath and Bhagwan Das should have been murdered at different times and lastly the delay in the first information report created doubts about its truthfulness.

8. In the appeal against acquittal preferred by the State the High Court has held that the Sessions Judge had acted perversely in acquitting the appellants in the face of the clear and convincing evidence of Smt. Koshi and Anant Ram and the fully acceptable explanation given by Smt. Koshi for the delay in giving the first information report. After scrutinising the evidence meticulously, the High Court has held that the evidence on record clinchingly proved the guilt of the appellants and

hence it has set aside the acquittal of the appellants and convicted and sentenced them as set out earlier.

9. Arguing the case of the appellants Mr. Kohli, learned counsel strenuously contended that the High Court has grievously erred in holding that the evidence on record brought home the guilt of the appellants without room for any doubt. The further contention was that in any event the High Court should have realised that it was dealing with an appeal against acquittal and as such even if the evidence offered scope for a different view being taken than the one taken by the Sessions Court, the High Court should not have interfered with the judgment of the Sessions Judge merely because the evidence commended itself for acceptance to the High Court.

10. We shall now deal with the contentions of Mr. Kohli in detail. It was argued that the story of the first appellant approaching the deceased for compounding the case against Kallu cannot be believed because Bhagwan Das had not accused Kallu of having committed theft of his gun in the report given by him. It was further stated that even if the first appellant had interceded in the matter, the refusal of Bhagwan Das to compound the offence would have been long forgotten as it had happened on year ago and there was no reason for the appellants to make up a closed incident on the day of occurrence. Even with reference to the incident which had taken place the previous day when the deceased prevented the first appellant from impounding their buffalo the argument was that it was too flimsy a motive for the appellants to commit the murder of Bhagwan Das and Ram Nath. It was lastly stated that in any event Smt. Koshi could not have had any personal knowledge about these matters and as such her evidence regarding the motive for the occurrence cannot be given any value. We are not persuaded by any of these contentions. Smt. Koshi being the daughter-in-law of Bhagwan Das and the wife of Ram Nath should have certainly known about the theft of the gun and the case pertaining to it as well as the attempt on the previous day to impound the buffalo. Insofar as the adequacy of the motive is concerned, it is not a matter which can be accurately weighed on the scales of a balance. It is quite likely that perhaps there were other factors also for the appellants to have animosity towards the deceased but about which Smt. Koshi was not aware of. Over and above all this, it has to be remembered that this is not a case resting on circumstantial evidence but a case where the murders had taken place in broad day-light and had been witnessed by Smt. Koshi, Anant Ram, and others. It is needless to say that when there is acceptable evidence of eye-witnesses to the commission of an offence the question of motive cannot loom large. It was also incidentally argued that the prosecution had failed to establish any community of interest between appellants 1 to 3. But this argument also cannot prevail when the complicity of all the three appellants in the commission of the offences is unmistakably proved by acceptable evidence.

11. Mr. Kohli then argued that Smt. Koshi could not have witnessed the attack on her husband and even if she had, she could not have run to the place of attack of Bhagwan Das and seen the attack on him also. This argument overlooks the fact that Smt. Koshi's house was within hearing distance of the place where Ram Nath was attacked. She could, therefore, have clearly heard the cries of her husband when he was attacked and rushed to the place to see what the matter was. After being a helpless spectator to the attack on her husband there is nothing improbable in her going to see what the fate of her father-in-law would be when the appellants went towards the Rahania saying that they should deal with Bhagwan Das also. As a matter of fact she had not seen the attack on Bhagwan Das from the inception but only in its later stages because she had first gone near her husband to render him aid but finding that life was extinct she had then run to the Rahania to see the fate of Bhagwan Das. The High Court has remarked that Smt. Koshi's evidence rings true in full measure and it was totally free from embellishments. Her report, Ex. Kha-1 has also been found to be completely in conformity with her evidence. Having regard to the respective places where Ram

Nath and Bhagwan Das had been attacked and killed and the central location of the house we are inclined to agree fully with the High Court in holding that Smt. Koshi was a truthful witness and the Sessions Judge was totally unjustified in rejecting her testimony. Mr. Kohli argued that the High Court has Erroneously truncated the evidence if Smt Koshi into two parts, one relating to the murder of Ram Nath and the other relating to the murder of Bhagwan Das instead of viewing the evidence as a whole and this has resulted in the High Court glossing over the infirmities in the evidence of Smt. Koshi. We find no merit in this argument because the occurrence had taken place at two different sites and had been witnessed by different persons except Smt. Koshi who had witnessed both the occurrences. The High Court had, therefore, to consider the evidence relating to the two incidents in their respective contexts but in doing so the High Court has not failed to evaluate the evidence of Smt. Koshi in its entire perspective.

12. The evidence of Smt. Koshi has been corroborated by Anant Ram insofar as the murder of Ram Nath is concerned and in some measure by Jagan Nath and Prabhu regarding the murder of Bhagwan Das even though they have been treated as hostile witnesses. Their names find a place in Ex. Kha-1. It was argued by Mr. Kohli that if Anant Ram had witnessed the attack on Ram Nath he too would have run to the Rahania and seen the attack on Bhagwan Das also. There is no merit in this contention because Anant Ram, being older than Smt. Koshi may have been overcome by shock and fear and stayed back instead of running to the Rahania to see the fate of his brother. The very fact that Anant Ram says that he witnessed only the attack on Ram Nath and did not go to the Rahania and see the Attack on Bhagwan Das lends credence to his testimony. Insofar as the evidence of Jagan Nath and Prabhu are concerned it has to be eschewed from consideration but even so it has to be pointed out that they had resiled from their testimony in the committal court only insofar as the overt acts of the first appellant are concerned, but had deposed about the acts of the other two appellants.

13. Mr. Kohli argued that Smt. Kohli could not have witnessed the occurrence because she has not been able to explain how contusions and abrasions came to be found on the dead bodies of Ram Nath and Bhagwan Das. This argument overlooks the fact that when three persons beset themselves on a victim and attack him in quick succession it will not be possible for a witness standing at a distance to say where each cut or stab fell on the body and whether the blade or the handle caused one or the other of the injuries. It is quite likely that the handle of the axe also came in contact with the body of the victim and likewise the spears also had been used now and then as a lathi to inflict blows.

14. Serious comment was made by Mr. Kohli regarding the delay in the giving of the report Ex. Kha-1. The criticism, in our opinion, is made without due realisation of the realities of the situation in which Smt. Koshi found herself placed on the day in question, The murders had taken place in the afternoon and by the time the initial shock was got over, it would have been evening time. No one was prepared to come to the rescue of Smt. Koshi had been able to take the bodies only the next morning and reach the police station in the afternoon and give a report.

15. A strange argument was advanced by Mr. Kohli adopting the line of reasoning taken by the Sessions Judge. The learned counsel stated that Ram Nath and Bhagwan Das should have been murdered at different times because the level of putrefaction of their bodies differed materially. We find the argument to be devoid of merit because the condition of the bodies of both the victims was more or less the same except for one small factor viz. "a few hairs over the head could be easily pulled out," in the case of Ram Nath's body. In all other aspects the condition was the same viz. "Rigor mortis had passed off; semi-digested food was coming out from the mouth and nostrils;

tongue was protruding; abdomen was distended; penis and scrotum were swollen; faces was present at anus; blisters were formed all over the body and cuticles were peeling off'. Therefore, merely because a few hairs in the head of Ram Nath's dead body were coming off it cannot be said that Ram Nath should have died 72 hours earlier to the post-mortem examination. We also find that no questions have been put to Dr. Jaidka that the two persons would have died at different times. On the other hand his evidence is that both the victims should have died about 48 hours prior to autopsy. It is, therefore, futile to contend that Ram Nath and Bhagwan Das should have died at different times and the prosecution case is false.

16. It was lastly urged that the High Court should not have interfered with the judgment of acquittal rendered by the Sessions Judge because the prosecution evidence is capable of being viewed differently and the Sessions Judge had taken on view which did not commend itself for acceptance to the High Court, the High Court should not have disturbed the findings of acquittal. The proposition of law put forward by Mr. Kohli is no doubt well settled but when the High Court has found that the reasoning of the Sessions Judge is perverse and that the prosecution evidence does not afford scope for two views being taken, the High Court is entitled to reverse the judgment of the Session Judge and consist the appellants.

17. On a consideration of the matter we find that the High Court has not erred in any manner in the exercise of its powers or exceeded its powers under Section 386. Criminal Procedure Code in allowing the appeal by the State and setting aside the acquittal of the appellants and convicting them under two counts under Section 302 read with Section 34 IPC. We, therefore, decline to interfere in the matter. The appeal will stand dismissed and the convictions and sentences awarded to appellants will stand confirmed.

</html