

State of U. P.

Vs

Ram Swarup and Others

Criminal Appeal Nos. 336 and 337 of 1978

(G.L.1 Oza, B.C. Ray, Jagannatha Shetty JJ)

26.02.1988

JUDGMENT

JAGANNATHA SHETTY, J. -

1. These two appeals by special leave are by the State of U.P. The respondents-accused in both the appeals were convicted by the Sessions Judge, Farrukhabad, Manipuri under Sections 302/149, 307/149 and 148 of IPC and sentenced to various terms of imprisonment. Against the said conviction and sentence the accused preferred Criminal Appeal Nos. 235 and 240 of 1972 before the High Court of Allahabad. The High Court by judgment dated April 19, 1977 allowed the appeals, set aside the conviction and acquitted them of all the charges.

2. On March 2, 1970 there was triple murder in the village Husainpur Tarai, P. S. Shamshabad in the District of Farrukhabad : (1) Moonga Lal, (2) Dharmoo and (3) Jawala were done to death by gun shots. It was alleged by the prosecution that the village was mostly inhabited by dhobies and kisans. There was no coordination between them. The houses of the accused and the deceased are close to each other. There appears to be only a pathway in between. The deceased obstructed the pathway by constructing a bund across it and also by placing thorny bushes. That was the subject matter of a panchayat in which Moonga Lal had agreed to remove the obstruction. But he never did. On March 2, 1970 at about sunset time Moonga Lal was working with his cutting machine under the chhappar in front of his house. Lajja Ram and Jamadar were operating the machine. Dharmoo and Jawala were sitting near the chabutara. There then the accused and some others armed with the guns, pistols and spears came to the chabutara of Moonga Lal. They fired from the guns. Dharmoo and Moonga Lal died at the spot. Jawala died while being taken from chabutara to his house. Jamadar, Smt. Badame and Smt. Ram Pyari who were nearby received fire-arm injuries.

3. The first information report was lodged by Bachchu (PW 3) on March 3, 1970 at 7.00 a.m. in the police station which was at a distance of nine miles from the place of occurrence. The investigation was conducted by Shri P. R. Singh (PW 16) and Shri B. P. Singh (PW 15).

4. The post-mortem examination of the bodies of the deceased was conducted by Dr. B. N. Tangri (PW 1). Apart from circular wounds with irregular invested margins found on the body, all the vital organs of the deceased were also ruptured. In the opinion of the doctor, the injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause death.

5. On March 3, 1970, at about 10.10 a.m. the injured Smt. Ram Pyari was examined by Dr. R. P. Chaudhary (PW 2). It was noticed that she had multiple fire-arm injuries each measuring 1/8" X 1/8". The same doctor also examined Smt. Badame and Jamadar. The former had three injuries

while the latter had four - all caused by fire-arms.

6. As many as fourteen accused were charge-sheeted under Sections 302/149, 307/149 and 148 of IPC and tried by the Sessions Judge, Farrukhabad.

7. The prosecution examined several witnesses out of whom five were eye-witnesses : Bachchu (PW 3), Jamadar (PW 9), Smt. Ram Pyari (PW 11), Lajja ram (PW 12) and Munshi (PW 14). The trial judge after considering their evidence and other material on record convicted eight accused, while acquitting six of them. They were sentenced to life imprisonment under Section 302/149, IPC, 7 years imprisonment under Section 307/149 IPC and 2 years under Section 148 IPC.

8. The accused who were convicted preferred appeal Nos. 235 and 240/1974 before the Allahabad High Court. The High Court allowed the appeals, and acquitted all of them. The State of U.P. has come up before this Court challenging the legality of the decision of the High Court.

9. The High Court has given mainly three reasons for acquitting the accused : (i) All the eye-witnesses produced by the prosecution are partisan witnesses being close relatives of the deceased. (ii) There was delay of about 12 hours in lodging the first information report and in all probabilities the report must have been lodged by Lajja Ram (PW 12) after preparation of the inquest report and not by Bachchu (PW 3) as stated by the prosecution; and (iii) The incident did not take place at about sunset time on March 2, 1970 as stated by the prosecution, but appears to have taken place in the night of March 2, 1970 or in the early hours of March 3, 1970. Incidentally, the High Court also observed that the deceased might have been murdered in their rooms and not at the chabutara as alleged by the prosecution. The High Court also doubted the motive alleged by the prosecution in view of the brutal nature of the crime committed.

10. We have been taken through both the judgments under appeal. We have also perused the relevant evidence since the judgment of the High Court does not refer to it. We are constrained to state that the judgment of the High Court is far from satisfactory from all aspects. The High Court has simply ignored the testimony of eye-witnesses by stating that they are either partisan witnesses or close relatives of the deceased. There is no rule of law to the effect that the evidence of partisan witnesses cannot be accepted. The fact that the witnesses are associated with the faction opposed to that of the accused by itself does not render their evidence false. Partnership by itself is no ground for discarding sworn testimony. Interested evidence is not necessarily false evidence. In a small village like the one under consideration where people are divided on caste basis, the prosecution may not be able to get any neutral witness. Even if there is any such neutral witness, he will be reluctant to come forward to give testimony to support one or the other side. Therefore, merely because the eye-witnesses are associated with one faction or the other, their evidence should not be discarded. It should, no doubt, be subjected to careful scrutiny and accepted with caution. We may also point out that law does not lay down different standard of appreciation of evidence when the prosecution witnesses and the accused are of different caste. The principles are the same as in other cases.

11. In regard to the first information report, the approach of the High Court appears to be erroneous. The High Court has stated that the FIR might not have been lodged by Bachchu (PW 3) as stated but it was perhaps lodged by Lajja Ram (PW 12). This assumption is contrary to the evidence on record. B. R. Singh (PW 16) the investigating officer has stated that he received the report from Bachchu at 7.00 a.m. and after registering the case he went to the place of occurrence. He has also stated that he copied out the report in the general diary and case diary before his departure to the place of occurrence. Bachchu in his evidence has asserted that the report was given by him and not by Lajja

Ram. There is nothing in his cross-examination to shake his testimony. The High Court in our opinion, has made much of an error said to have been committed in column No. 2 of the inquest report. B. P. Singh (PW 15) initially entered the name of Lajja Ram as the informant in column No. 2 of the inquest report. But it was later corrected as Bachchu. B. P. Singh has explained as to how that initial entry came to be made. It was, according to him an innocent entry, based on the information given by somebody at the inquest. It was inadvertently made by him. It would be indeed so, if one considers the evidence of Bachchu and Lajja Ram along with the evidence of the investigating officer. Besides, the report given by Bachchu is very much on record with his thumb impression. It may also be seen that special reports Ex. Kha-2 summoned by the trial court at the instance of the accused also indicates that it was sent on March 3, 1970 through a constable who reported back to Thana on the same day at 8.30 p.m. This also indicates that the report was in the custody of the police in the early hours on March 3, 1970. It is true that there was delay in lodging the first information report. But in the report itself Bachchu has stated that due to fear he could not come to the police station in the previous night.

12. Nor there is any justification for the High Court to doubt the correctness of the prosecution version as to the time at which the incident took place. One of the circumstances relied upon by the High Court to entertain that suspicion is the autopsy report in which the doctor has stated that he did not find any food or semi-digested food in the stomach of the deceased. It may be true that the doctor did not find any semi-digested food in the stomach. But we fail to understand as to how that could lead to an inference that the incident did not take place before sunset on March 2, 1970. Moonga Lal was at the cutting machine. He was still then working. The other two deceased were sitting nearby. The lunch taken by them in the afternoon must have been completely digested by that time. They had not taken their night food since all the inmates of the house were still working. There could not have been, therefore, any semi-digested food left in the stomach of the deceased. The other circumstance like the delay in lodging the first information report relied upon by the High Court has already been explained by us earlier.

13. That apart, there is so much of acceptable evidence about the time of incident. Dr. B. N. Tangri (PW 1) has stated that Moonga Lal, Dharmoo and Jawala might have died at about sunset on March 2, 1970. Dr. R. P. Chaudhury (PW 2) who had examined the injuries on Ram Pyari, Smt. Badame and Jamadar has stated that the injuries on them might have been caused in the evening of March 2, 1970. Bachchu (PW 3), Jamadar (PW 9) and Smt. Ram Pyari (PW 11) have consistently stated that the incident took place shortly before sunset. They did receive injuries in the same incident. They cannot be disbelieved on this aspect since the medical evidence supports their version.

14. With regard to the place of occurrence, there is hardly any reason for the High Court to doubt it. It is on record that the dead bodies were kept inside the house during the night and were brought out in the early morning. It is certainly not suggestive of the fact that the incident itself might have taken place inside the house. Jamadar and Smt. Ram Pyari have stated the need to take the bodies of the deceased inside the house during the night. The probability suggested by the accused, on the contrary was that there was dacoity in the house of the deceased in which they must have been murdered. Apparently this suggestion has no basis. The investigating officer did not notice any mark of ransacking or the traces of fire arms inside the house of Moonga Lal. Jamadar and Smt. Ram Pyari have testified to the effect that there was no dacoity in their house on that day. When dacoity is ruled out and when there is no other suggestion that the murder could have taken place inside the house, it would be unreasonable to go on suspecting the prosecution version.

15. Having reached these conclusions, we could straightway reverse the judgment of the High Court

and restore that of the trial court. But justice demands that we must consider the evidence which the High Court has failed to do. So we now turn to the evidence of material witnesses.

16. Bachchu (PW 3) has given the background of the case including the motive to commit the murder. He saw the entire occurrence while sitting in his chabutara which was close to the house of Moonga Lal. According to him all the accused came to the place where Moonga Lal was working. They were armed with fire arms. One of them fired first and thereafter all others fired. He did not however, give the name of the person who fired first at Moonga Lal.

17. Jamadar (PW 9) is the son of Moonga Lal. He was moving the wheel of the fodder cutting machine at the time of the incident and helping his father. Lajja Ram is his uncle. Lajja Ram was moving the other side of the machine. According to him, amongst the accused who came there, Ram Swarup and Phool Singh were armed with guns. The rest with pistols. Mangali first challenged his father. Then Ram Swarup fired at his father who fell down. At that time, Dharmoo and Jawala ran towards his father. Again there was firing by all the accused. Dharmoo and Jawala received bullet injuries and died. He also received gun shot injuries on his back, arms and buttocks. All the accused ran away towards east. He has stated that Moonga Lal and Dharmoo died at the very spot where they had fallen down.

18. Ram Pyari (PW 11) is the wife of Moonga Lal. She has stated that she was working at a place 4-5 steps from the place of occurrence. It was in front of her house. Jamadar and Lajja Ram were helping Moonga Lal. They were operating the machine while Moonga Lal was feeding grass to the machine. According to her, Mangali, Ram Swarup and the other accused arrived there. They climbed at the chabutara. Mangali threw a challenge to her husband stating, "You used to quarrel daily. I will see how you will escape today". Then Ram Swarup fired at Moonga Lal and Moonga Lal fell down. Dharmoo was her father-in-law. He was sitting along with Jawala in a nearby place. They were smoking tobacco. They immediately came to the chabutara of Moonga Lal. She was close to the place of incident. She saw her husband falling down and she also ran and fell upon his body evidently to save him. She did not care for her life. There then all the accused started firing, which hit Dharmoo and Jawala. Consequently, they also died. She was also hit on her back. After firing, the accused went away.

19. Lajja Ram (PW 12) is another eye-witness. He has corroborated substantially what Smt. Ram Pyari and Jamadar have stated. According to this witness, Ram Swarup, Mangali and Phool Singh were armed with guns. The rest had pistols and lathis with them. It was Mangali who first challenged Moonga Lal and Ram Swarup first fired at him. The other accused fired subsequently which caused the death of Dharmoo and Jawala. Thereafter, the accused went away towards the house of Mangali.

20. The last witness in this series is Munshi (PW 13). He has gone there to call Jawala. He sat at the chabutara of Bachchu. He saw the accused persons coming there along with three unknown persons. He has narrated the events as stated by Lajja Ram and Ram Pyari. After the accused left he went to the chabutara of Moonga Lal and carried Jawala to his house, but he died on the way.

21. What becomes clear from the evidence of these witnesses, is that Mangali first challenged Moonga Lal. Ram Swarup fired the first shot at him. Moonga Lal was their prime target. When Moonga Lal fell on the ground, Dharmoo and Jawala who were sitting nearby rushed to save him. Ram Pyari also ran towards her husband. Then there was again firing by the accused. None knows who against whom. Dharmoo and Jawala became the victims. Ram Pyari and Jamadar received the

fire arm injuries.

22. From these evidence, it seems to us that the conviction and sentence on Ram Swarup and Mangali cannot be found fault with. They were, in our opinion, rightly convicted and sentenced on all counts. But with regard to other accused the evidence is not clinching. It is obvious that the accused never went there to kill Dharmoo and Jawala. The accused in fact had nothing against them. Something must have happened suddenly. They could, therefore, be convicted only "for culpable homicide not amounting to murder", punishable under the first part of Section 304. They, however, deserve a little concession in the sentence as the incident was of the year 1970.

23. In the result and for the reasons stated, the appeals are allowed. The judgment of the High Court is reversed. The acquittal of the accused who are respondents in these appeals is set aside. The conviction and sentence passed by the trial court on Ram Swarup and Mangali are kept undisturbed. The conviction and sentence as against the other accused are modified by sentencing each of them to six years rigorous imprisonment under Section 304 (First Part) of IPC. Their conviction and sentence on other counts are set aside.

24. The bail bonds of the accused are cancelled. They shall surrender and undergo the remaining part of the sentence.

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