

State of U.P

Vs

Madan Mohan And athers

Criminal Appeal No. 525 of 1978

(S. Natarajan, A. M. Ahmadi JJ)

20.04.1989

JUDGMENT

AHMADI, J. –

1. The three respondents were convicted by the learned Additional Sessions Judge, Kanpur under Sections 148 IPC and 302/149 IPC for the murders of Ram Shanker and his friend Satya Narain Singh. They were sentenced to suffer rigorous imprisonment for two years under Section 148 IPC and imprisonment for life for the offence under Section 302/149 IPC. Both sentences were ordered to run concurrently. The High Court of Allahabad allowed their appeal and set aside the order of conviction and sentence passed by the trial court. They were acquitted of all the charges levelled against them and their bail bonds were discharged. The State of U.P. feeling aggrieved by the order of acquittal has approached this Court by way of special leave. The facts relevant to be stated are as under :

The incident in question occurred on December 29, 1972 at about 7.30 p.m. near block No. 10 in Govind Nagar locality of the city of Kanpur. In the said incident Ram Shanker and his friend Satya Narain received fatal injuries. Ram Shanker died on the spot about 65 steps away from the place of occurrence whereas his companion Satya Narain expired in the hospital on January 8, 1973. It may here be mentioned that both the deceased persons had a criminal record. The Investigating Officer PW 7, Jagdish Kumar has stated that both the deceased were bad characters of Govind Nagar area and several cases of marpit were pending against them, particularly Ram Shanker. Besides, there were cases pending against Ram Shanker under Section 25, Arms Act and Section 392 IPC also. PW 1 Sheo Shanker, the brother of the deceased Ram Shanker, also admits that there were two to four cases pending against his brother, including a couple of cases under Section 25, Arms Act.

2. One Sneh Lata Aggarwal resided in the house of one Tiwarijee in 'E' Block of Govind Nagar. The deceased Ram Shanker had illicit relations with her. This fact is admitted by his brother PW 1 also. Ram Shanker and his companion Satya Narain used to visit her regularly which was not likely by the landlord Tiwarijee. A couple of days prior to the incident Tiwarijee had reprimanded them for visiting Sneh Lata. This had annoyed the two deceased. They had, therefore, beaten up Tiwarijee. On the morning of December 29, 1972, respondent 1 Madan Mohan is alleged to have admonished the deceased Ram Shanker for beating Tiwarijee and is further alleged to have threatened to kill him (Ram Shanker) if he misbehaved in future. According to the prosecution, on the evening of December 29, 1972, the three respondents along with two or three others cordoned off the two deceased on the footpath near the residence of the respondents and inflicted knife blows on them

which ultimately proved fatal. As stated earlier, Ram Shanker died on the spot while his companion Satya Narain died in the hospital a few days later.

3. The prosecution relies on the evidence of two eyewitnesses PW 1 Sheo Shanker, the brother of the deceased Ram Shanker, and PW 2 Inder Singh. Both these witnesses arrived at the scene of occurrence after the quarrel started and claim to have seen the respondents inflicting knife injuries on the two deceased from a short distance. In addition the prosecution relies on the statement of deceased Satya Narain recorded in the hospital on the next morning. The said statement is admitted in evidence as a dying declaration. The trial court accepted the evidence of the two eyewitnesses as well as the dying declaration and convicted the respondents. The High Court, however, came to the conclusion that the presence of the two eyewitnesses at the place of occurrence was doubtful and since the dying declaration gave out a version totally different from the version of the two eyewitnesses it refused to place reliance on the dying declaration. The High Court, therefore, reversed the finding of conviction and acquitted all the respondents.

4. The learned counsel for the State took us through the evidence of both the eyewitnesses as well as evidence in regard to the dying declaration and contended that the High Court had not properly appreciated the evidence placed on record. The learned counsel, therefore, submitted that we must restore the decision of the trial court. We have gone through the reasons of the trial court as well as the High Court and we are inclined to think that the view taken by the High Court is not erroneous and does not require interference under Article 136 of the Constitution of India.

5. PW 1 is the brother of deceased Ram Shanker. The deceased and PW 1 were living together at a distance of about a furlong from the place of occurrence. PW 1 was managing a grain shop situate at a distance of about 3 1/2 miles from the scene of occurrence. Usually he went to his shop at about 9 or 9.30 a.m. and closed it by about 7.30 or 8 p.m. However, on the date of the occurrence he states that he went late at about 11 or 11.30 a.m. as his brother met him on the way and spoke to him about the incident that had taken place in the morning. He also claims that he closed the shop early at about 6.30 or 7 p. m. and while on his way home he passed through the bazar and saw the incident in question. He claims to have reached the place of occurrence by about 7.25 p.m. when the quarrel was in progress and claims to have seen the actual stabbing from a distance of 8 to 10 paces only. Admittedly he made no effort to rescue his brother or seek help. He went to his brother only after the latter had collapsed at a distance of about 65 paces from the place of occurrence. When he went to his brother he found him dead. So far as Satya Narain is concerned it is his say that his relatives who were residing in the vicinity came and took him to their residence before he was taken to the hospital. After the event PW 1 prepared the first information report at the spot and then delivered it at the police station which was only 100 paces away.

6. PW 2 Inder Singh states that when he was purchasing vegetables in the adjacent lane, he heard a commotion and immediately went towards the crossing of block No. 10. He claims to have seen the respondents and one or two others assaulting the two deceased with knives. The incident occurred on the footpath near the house of respondent Madan Mohan. He also states that the girl Sneha Lata was there besides Kamlesh, Jagan Nath Tiwari and others. He then states that PW 1 wrote the complaint, noted the names of the witnesses after ascertaining them from those present and then went to the police station to deliver the same. The statement of this witness was recorded by the police on the next day at about 9 a.m. The residence of this witness is at a distance of about two furlongs from the vegetables market.

7. The locality where the incident occurred was a thickly populated one. There were several

residential quarters as well as shops and dispensaries nearby. At the time of the occurrence, there were several persons who had come out to purchase vegetables from the nearby lane. The halwai shop as well as the dispensaries of two medical practitioners near the place of occurrence were open. On hearing the commotion several persons had come out of their houses. Even though statements of a few including one of the medical practitioners were recorded none was called to the witness box. Both PW 1 and PW 2 cannot be said to be residents of the locality where the crime was committed as their residences were at some distance from the place of occurrence. The High Court was, therefore, of the opinion that their presence at the scene of occurrence at the relevant point of time cannot be said to be natural and was therefore doubtful. In the case of PW 1, the High Court opined that he was an interested witness being the brother of deceased Ram Shanker and his claim that he closed his shop early and was, therefore, at the scene of occurrence when the incident occurred was difficult to accept. The High Court also took note of the fact that while PW 1 and PW 2 stated that the incident occurred at about 7.30 p.m., the deceased Satya Narain in his dying declaration gave the time of the incident as 6 p.m. The version regarding the incident given by PW 1 and PW 2 also materially differs from the version found in the dying declaration. The names of the accused disclosed in the dying declaration are also different. There is no mention about the participation of respondent Chander Mohan in the incident in the dying declaration. The dying declaration discloses that only respondent Madan Mohan caused knife injuries to deceased Satya Narain whereas deceased Ram Shanker was attacked by Kamla Tiwari, Rama and two others who were never prosecuted. Thus, respondent Chander Mohan and respondent Daya Shanker alias Munna have not been assigned any role by Satya Narain in his dying declaration. There is no mention about PW 1 and PW 2 having witnessed the occurrence even though the names of other witnesses are mentioned in the dying declaration. The High Court was, therefore, right in coming to the conclusion that the prosecution version regarding the incident as stated by PW 1 and PW 2 materially differs from the version unfolded by the dying declaration. The High Court was also right in observing that not a single witness from the locality was examined even though the statements of some of the residents including Sneh Lata were admittedly recorded. Sneh Lata was not examined on the ground that her whereabouts were not known. For the non-examination of the other prosecution witnesses no explanation is forthcoming. The relations of the deceased Satya Narain who removed the injured from the place of incident have also not been examined. Thus not a single person from the locality has been brought before the court to unfold the actual occurrence and instead strong reliance is placed on the evidence of PW 1 and PW 2 whose presence is doubtful.

8. There is an additional circumstance which, says the High Court, adds to the doubts already stated. The respondent Chander Mohan had suffered a cut injury on his thigh. He had immediately gone to the police station with the bleeding injury. The Investigating Officer admits his presence at the police station at about 7.45 p.m. It is also not disputed that respondent Chander Mohan had lodged a complaint giving his own version regarding the incident. It is, therefore, clear from the evidence that respondent Chander Mohan had reached the police station promptly after the incident. The trial court did not attach sufficient importance to this fact and conjectured thus :

It is quite possible that accused Chandra Mohan might have managed to suffer a slight cut in his thigh either by self-inflicting it or through a friendly hand to lend support to a counter-version of the incident which he reported at the police station at 8.30 p.m.

The High Court rightly points out that there is no basis for this inference. The time 8.30 p.m. is not correct because even according to PW 7 he had seen the said accused at the police station at 7.45 p.m. PW 1 and PW 2 have not explained the injury on the thigh of Chander Mohan. As pointed out

earlier the deceased Satya Narain has not assigned any role to Chander Mohan in his dying declaration. In these circumstances, the High Court was justified in taking the view that the inability of PW 1 and PW 2 to explain the injury to Chander Mohan adds to the doubts regarding their claim to have seen the incident. To top it all the prosecution has suppressed the genesis of the crime.

9. There can be no doubt that PW 1 and PW 2 can be said to be chance witness. Their residences are a furlong or two away from the scene of occurrence. The story of PW 1 that he closed the stop earlier than usual is difficult to believe because he does not assign any reason for so doing. The allegation that respondent Chander Mohan's complaint was first in point of time but was registered later cannot be lightly brushed aside. It is also surprising that PW 1 preferred to write down the complaint on the spot rather than run down 100 paces to the police station to inform the police. PW 1 was asked to explain this conduct and he stated that he preferred to write down the complaint "as I had that the police will not pay any heed and will not take down the report correctly". There was no reason for PW 1 to entertain such a doubt. He does not say that he had any such experience in the past. Both the deceased had a criminal record and were history sheeters. Several complaints were pending against Ram Shanker. He must be having many enemies. The defence case is that some of their common enemies got together and killed them and PW 1 was not present but came later filed the report on the basis of the morning incident. Be that as it may, the fact remains that the genesis of the crime is suppressed and no witness from the locality whose presence would be natural is examined which creates a doubt regarding the truth of the prosecution version.

10. In the above circumstances, it is difficult to say that the High Court was not justified in taking the view that it took. The view taken by the High Court is a reasonable view and we do not think we would be justified in interfering with the same under Article 136 of the Constitution. We, therefore, dismiss this appeal. The bail bonds of the respondents will stand cancelled.

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