Lala Ram and Others

Vs

State of U. P.

Criminal Appeal No. 188 of 1980

(S.R. Pandian, K. Jayachandra Reddy JJ )

07.02.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. The Sessions courts convicted all the ten accused under Section 148 and Section 302 read with Section 149 Indian Penal Code and sentenced each of them to two years RI and life imprisonment under the two counts respectively. The sentences were directed to run concurrently. The convicted accused preferred an appeal to the High Court of Allahabad. One of the accused Har Sewak who figured as accused 1 died during the pendency of the appeal. The convictions and sentences of all the other nine accused were confirmed. Hence they have preferred the appeal by way of special leave granted by this Court. During the pendency of the appeal in this court accused 3 and accused 9 died.

2. Learned counsel appearing for the appellants submitted that the case arose out of an acute faction and the witnesses relied upon by both the courts below being partisans are highly interested and there are any number of circumstances indicating that the whole prosecution story is fabricated and at any rate the evidence cannot be relied upon at all. Learned counsel for the respondent state on the other hand submitted that the two courts below have accepted the evidence and therefore this Court while exercising jurisdiction under Article 136 cannot interfere. It is true that this court generally will not interfere in the concurrent judgment of criminal courts but it has also been held that when the interest of justice requires the court can interfere even in such cases. In Jagta v. State of Haryana ((1974) 4 SCC 747 : 1974 SCC (Cri) 657) it is held that where there is some glaring infirmity in the prosecution evidence and as a result their is any miscarriage of justice, this Court can interfere. In Jagir Singh v. State (Delhi) ((1975) 3 SCC 562 : 1975 SCC (Cri) 129), this Court, having noticed that the evidence relied upon by the court below is not worthy of credit and unreliable, while exercising jurisdiction under Article 136 of the Constitution of India, interfered and set aside the convictions and sentences. In Balak Ram v. State of U. P. ((1975) 3 SCC 219 : 1974 SCC (Cri) 837) this court while examining the scope of Article 136 observed that : (SCC p. 227, Para 26) "The powers of the Supreme Court under Article 136 are wide but in criminal appeals Supreme Court does not interfere with the concurrent findings of fact save in exceptional circumstances" In Nachhattar Singh v. State of Punjab ((1976) 1 SCC 750 : 1976 SCC (Cri) 182 : AIR 1976 SC 951) this court again examined the scope of Article 136 and observed : "When the are various infirmities in the prosecution case, the Supreme Court can interfere."

3. Bearing these principles in mind, we shall now examine the prosecution case and the evidence relied upon and the respective submissions in respect of the same. The material witnesses and the accused and the two deceased persons belong to Singhulapur village. The deceased Pratap Narain

was the brother of Jagat Narain PW 1, complainant in the case. The other deceased Sushil Chandra was the grandson of Ram Dularey maternal uncle of PW 1. Ram Gopal, another maternal uncle of PW 1 executed a sale deed in respect of the property of his share in favour of Ram Dularey, his own brother. In respect of the same a number of disputes including civil litigations had taken place between Ram Autar and Ram Dularey. And the complainant Jagat Narain helped Ram Dularey. Consequently their was enmity between him and some of the accused who are the sons of Ram Autar, the brother of Ram Dularey. There was also old enmity between the complainant and the accused Har Sewak. A number of disputes of civil and criminal nature were there between these two families. During the elections in 1972 there was an incident of 'marpit' between the two parties and a case was registered. It may not be necessary to refer to other disputes since it is an admitted fact that there was acute enmity and bitter faction between the two families.

4. On September 6, 1973 at about 4.30 p.m. complainant Jagat Narain, PW 1 and his brother Deo Narain who was not examined, were sitting on a cot in the verandah and on another cot deceased Sushil Chandra and Bhagwan Saran were sitting. On yet another cot the other deceased Pratap Narain was sitting. At that time all the accused came there from southern side carrying guns and proceeded from the north west corner of the house of one Mansa Ram and accused 1 Har Sewak shouted from near the southern keri and all of them fired shots and it resulted in the death of two deceased person. As a result of firing Jagat Narain PW 1 and his brother Deo Narain not examined, and Bhagwan Saran took to their heels and took shelter and from there raised alarms. According to the prosecution Jagat Narain PW 1 and Deo Narain concealed themselves behind the pillars and Bhagwan Saran took shelter behind the thresher. Nathhu Lal PW 2 was attracted by the alaram and PW 8 Rameshar Dayal and PW 12 Ram Chandra came and also witnessed the occurrence from the chabutra of PW 2. The accused were accosted by the witnesses and they ran away. PW 1 dictated the report to one Om Prakash (not examined) and left for the police station with the same. Thee dead bodies were placed on the cots and shifted to a room and kept inside the room because of the apprehension that the accused may remove the dead bodies. PW 1 handed over the report in the police station at about 7.30 p.m. PW 9 Head Constable Ram Jash Singh prepared a report and a case was registered. PW 13 ASI Fakhruddin took up the investigation and the inquest was prepared and dead bodies were sent for post-mortem. The observation report was prepared and site plan was also prepared. PW 3 Dr K. L. Kanaujiya performed the autopsy on the dead body of Sushil Chandra and found four gunshot wounds. He also conducted post-mortem on the other deceased Pratap Narain and found five gunshot wound. The accused were arrested and after completion of the investigation the prosecution submitted the charge sheet against the appellants.

5. Out of the 13 witnesses examined, PWs 1, 2 and 8 figured as eye witnesses. The trial court and the appellate court accepted their evidence.

6. The scribe who wrote Ex. P 1 is not examined and in that report omnibus statement a was made that all the ten accused fired shots at the persons sitting. Admittedly PW 1 Jagat Narain is the staunch enemy of the accused but though he claims to be sitting along with the deceased persons he did not receive a singh injury. Admittedly PWs 1, 2 and 8 are partisans and therefore they are highly interested witnesses. PW 2 also was a co-accused alone with Jagat Narain in a murder case. PWs 8 and 12 deposed that they were at the well and on hearing the gunshots fired, proceeded to verandah and witnessed the occurrence from the chabutra. Statements of PWs 8 and 12 is supposed to lend corroboration to the other witnesses.

7. The important question in this case is whether the version given by PW 1 can be relied upon. In Pandurang v. State of Hyderabad (AIR 1955 SC 216, 221-22 : (1955) 1 SCR 1083 : 1955 Cri LJ

572) it is held that "Unless therefore a witness particularises when their are a number of accused it is ordinarily unsafe to accept omnibus inclusions like this at their face value."

8. Further, the time of the occurrence as put forward by the prosecution case is highly doubtful. The doctor PW 3 who conducted post-mortem, having regard to the presence of undigested food in the stomach of the deceased persons, opined that both the victims could have died at 8 or 9 p.m. and the death has taken place within half an hour to one hour after taking food. Normally the deceased would have taken the food after sunset i.e. after 7 or 8 p.m. But the prosecution for the first time introduce a theory that the two deceased persons took food at 3 p.m. This theory appears to be highly artificial and if the occurrence has taken place at 8 or 9 p.m. the witnesses could not have identified the assailants. That apart from the injuries that are found on the bodies, it is impossible to hold that all the ten accused would have participated in the occurrence. There are only nine injuries altogether on both the deceased. Therefore it is highly improbable that all the ten accused could have participated. We have perused the evidence of PWs 8 and 12 also. They simply fall in line with the prosecution case that they saw the accused being present their. If the occurrence has taken place during night time even the evidence of these witnesses also become highly doubtful. Even these witnesses make an omnibus allegation that all the accused were their but they have not witnessed the actual occurrence. What is more these witnesses go to the extent of saying that about 15 shots were fired but the other persons including PW 1 who were sitting in close proximity to the two deceased persons were not at all injured. Besides all these infirmities the glaring circumstance in this case is that PW 1 a highly partisan witness has implicated as many as ten accused making an omnibus allegation that all the ten accused fired shots. Having given out anxious consideration we find it extremely difficult to accept such an omnibus allegation and confirm the conviction of all the ten accused. Such a confirmation, in our view, is bound to result in injustice and the is no other way of scrutinising evidence of these interested witnesses to separate grain from the chaff. In the result the convictions and sentences of the accused appellants are set aside and if they are in jail they should be set at liberty forthwith. Accordingly the appeal is allowed.

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