

State of U. P.

Vs

Lalla Singh and Others

Criminal Appeal No. 70 of 1977

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

13.03.1990

JUDGMENT

REDDY, J. -

1. This is an appeal by the State against the judgment of the Allahabad High Court.
2. 18 persons were tried by the IInd Additional District & Sessions Judge, Kheri for several offences under Sections 148, 302, 323, 324, 395, 396 IPC. They were alleged to have committed dacoity and murdered five persons on the intervening night of November 1 and 2, 1972 in the house of Kallaktar, one of the deceased in Village Bamhniyarpur in Kheri District. It was also alleged that these bandits took away Km Sarla from that house whose dead body was discovered later on in a field. According to the prosecution while one of the deceased Kallaktar, his brother and another deceased were undergoing imprisonment in the jail, Amar Singh, brother of the accused Mulaim Singh, who was residing in the house of Kallaktar developed illicit intimacy with Km Sarla. After the release of Kallaktar and his other associates mysteriously Amar Singh disappeared and it was suspected that Kallaktar and his family members were responsible for his disappearance. Since then there was enmity. Therefore, all the 18 accused raided the house of Kallaktar and committed these offences.
3. The learned Sessions Judge sentenced four persons to death and he also convicted four others and sentenced them to imprisonment for life. He, however, acquitted three of the accused. The convicted accused appealed to the High Court and the State also preferred an appeal against the order of the acquittal of the three accused. The High Court, however, only confirmed the convictions of the four accused including Ramesh Chander who was sentenced to death. The other three persons who were also sentenced to death as well as the remaining of the convicted accused were all acquitted. The appeal filed by the State was dismissed. The death sentence of Ramesh Chander was executed.
4. The State filed a special leave petition against 11 of the remaining accused respondents. But leave was granted only in respect respondents 1, 2 and 3 i.e. Lalla Singh, Ram Swaroop and Mulaim Singh, accused 1, 10 and 11 respectively. During the pendency of the appeal Lalla Singh, respondent 1 died. Therefore, in this appeal we are concerned only with the remaining two respondents, Ram Swaroop and Mulaim Singh, accused 10 and 11 respectively.
5. The learned counsel for the State submits that PWs 2 and 4 have identified Mulaim Singh and PWs 12 and 13 have identified respondent 3 Ram Swaroop and the weapons were also recovered from them. It is also his submission that the trial court has analysed the evidence against these two respondents and was satisfied about their guilt and the reasoning of the High Court for interfering

against this conviction is wholly unsound. To appreciate this argument it may not be necessary for us to refer to the evidence of all these four witnesses. We shall examine the findings of the trial court as well as the appellate court for the purpose of appreciating the submissions made. The trial court held that the prosecution case about the illicit intimacy between Amar Singh and Km Sarla should be believed. PWs 2 and 4 Smt. Rama Devi and Kamla Devi deposed that about 25 persons entered the house of Kallaktar. According to PWs 2 and 4, Mulaim Singh was not known to them and they were made to identify Mulaim Singh in the identification parade. The accused Mulaim Singh took the plea that he was very well known to PWs 2 and 4 and his village is only two miles away from the village of Kallaktar and that his brother Amar Singh was living in the house of Kallaktar and he used to visit. The learned Sessions Judge was not prepared to accept this plea of the accused. The other circumstance relied upon by the prosecution are that he had a motive to attack the house of Kallaktar and kill the members of his family. It can thus be seen that the culpability of Mulaim Singh, respondent 2, mainly rested on the evidence of PWs 2 and 4. The learned Sessions Judge very much relied on the fact of these two witnesses identifying Mulaim Singh and taking into consideration the other two circumstances namely the recovery and motive, he convicted him. Now coming to the case of Ram Swaroop, respondent 3, the prosecution mainly relied on the evidence of PWs 12 and 13 who have identified him in the identification parade and the other circumstances relied upon by the prosecution is that Ram Swaroop who was a police constable was absent from duty between October 31, 1972 and November 2, 1972 and made a false declaration and one other circumstance is the recovery of gun. It is alleged that the three of the empty cartridges that were found at the scene were fired from his gun. It may be mentioned that these two circumstances without the evidence of PWs 12 and 13 would be insufficient. The trial Judge, however, accepted the evidence of PWs 12 and 13 and the other two circumstances and convicted him.

6. Now we shall examine the findings of the High Court in respect of these two respondents. Dealing with the evidence of the PWs 2 and 4, the High Court has given ample reasons in support of their finding namely that Mulaim Singh was known to PWs 2 and 4 very well and the prosecution's case that he is not known to them is to be rejected. The High Court found that Mulaim Singh used to visit the house of Kallaktar as his brother Amar Singh was living there and that his village also is not far from the village of Kallaktar. The High Court has also held that there is no valid reasons to hold that this accused had a motive to kill the Kallaktar's family members. The High Court has referred to the evidence of the other witnesses who admitted that Mulaim Singh used to visit this village. It is also noticed that these two ladies identified correctly without any mistake as many as eight accused not known to them. The High Court also pointed out that the evidence of these two witnesses was discarded in respect of some of the other accused who also participated in the identification parade. Then regarding their recovery of the weapon the High Court has clearly pointed out that the evidence is not acceptable.

7. Now regarding the case of respondent 3, Ram Swaroop, the High Court was not prepared to rely on the PWs 12 and 13. It is pointed out that he was also known to PWs 12 and 13 very well and that the evidence that they were not known was not acceptable. In this connection, the High Court relied very much on the circumstances that respondent 3 along with other police officers went to the house of Kallaktar to arrest one Ved Prakash. The High Court did not place reliance on the evidence of PW 38 who effected the recovery of weapon. The High Court has pointed out that the investigation is not fair and aboveboard and is highly tainted. It can thus be seen that the High Court also has given valid reasons for acquitting these two accused. Even if it is to be said that the reasons given by the trial court are fairly sound, but at the same time the reasons given by the High Court cannot be characterised as perverse or wholly unsound. The view taken by the High Court also seems to be

reasonable. Therefore, at the most it can be said that two views are possible. In such a situation we find it extremely difficult to interfere under Article 136 of the Constitution of India. The appeal is dismissed accordingly.

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