

Zahoor and Others

Vs

State of U.P.

Criminal Appeal No. 587 of 1979

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

25.10.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. –

1. There are three appellants in this appeal and they figured as accused 1, 11 and 12 before the trial court. They along with nine other accused 2 to 10 were tried for offences punishable under Section 302 read with Section 149, Section 325 read with Section 149, Section 323 read with Sections 149 and 452 IPC. The trial court acquitted all the 12 accused. The State of U.P. preferred an appeal against the said order of acquittal and the High Court convicted the three appellants under Section 302 read with Section 149 IPC and sentenced each of them to undergo imprisonment for life, under Section 323 read with Section 149 to undergo one year's RI, under Section 325 read with Section 149 to undergo five years' RI and under Section 148 to further undergo 2 years' RI. The acquittal of the rest of the accused was confirmed. In this appeal it is submitted that the FIR was lodged belatedly after due deliberations and the witnesses were all interested and their evidence ought not to have been relied upon by the High Court. The further submission is that the defence version namely that some unknown assailants committed dacoity in the house of the deceased on that night and caused the death of the deceased and also caused injuries to PWs, is probable, and that the prosecution witnesses have put forward the present story after due deliberations. To appreciate this contention it becomes necessary to state the prosecution case in brief.

2. The deceased, the accused and the material witnesses belong to Village Sidhapur in Barabanki District. The deceased Idris was a well-to-do man of the village and his house was situated in the midst of the village. To the north of his house was the house of PW 6 and to his east was the house of PW 5. PW 1, his wife, also belongs to the same village. PW 2 is the farm servant of the deceased and belongs to the same village. About a week prior to the occurrence the deceased had purchased the tobacco field of the Ghulam Lodh and paid Rs. 300 as earnest money. Ghulam Lodh, however, sold that plot subsequently to accused 1 and 9. In the morning of March 8, 1967 at about 8 a.m. PW 2, the farm servant of the deceased met Ghulam Lodh on the way and questioned him as to why he has sold the field to accused 1 and 9 and there was a verbal altercation between them. Apprehending as assault PW 2 ran to the deceased and told him what had happened. Thereupon the deceased went to accused 1 and 9 and Ghulam Lodh. On return from them the deceased told his wife PW 1 that accused 1 and 9 and Ghulam Lodh were bent upon a quarrel. At about noon, the deceased learnt that accused 1 and others were collecting persons. On hearing that the deceased called for his labourers. They, however, were busy in separating tobacco leaves from the stumps, inside the house. At about 5 p.m. when the deceased and his servant including PW 2 his wife PW 1 and his brothers PW 8 and Moharram Ali were sitting on the chabutra, about 20 men came there. One Putti, the absconding accused was holding a hand grenade and a country made pistol. On seeing the miscreants, those who

were sitting outside his house, ran inside and closed the eastern exit. But some of the miscreants climbed down the house and opened the exit. Thereafter all those who were outside his house, also entered the inner courtyard. On seeing them the deceased, his son and his two brothers ran to take shelter in the western kothri and closed the door. Some of the labourers including PW 2 however, stayed in the inner courtyard. The miscreants assaulted the labourers in the courtyard. Thereupon they broke open the western side door and from there dragged the deceased and his two brothers and beat them with lathis. When PW 1 rushed to the rescue of her husband, Chauhan accused 11, who is one of the appellants herein, caught hold of her. Because of severe beating the deceased fell down in the inner courtyard and accused 1, the first appellant herein, instigated the others to kill him. He placed bricks underneath the head of the deceased and accused 1 and 12, appellants 1 and 3 herein, holding a lathi on one side and accused 9 and Adharey, another assailant, holding it on the other side pressed the neck of the deceased by placing the lathi on the throat which resulted in the instantaneous death of the deceased. Thereafter the culprits ran away. The noise attracted PWs 5 and 6. They saw from their doors some of the labourers running away including PWs 2 and 4. Thereafter the dead body of the deceased was placed on a cot. PW 1 dictated the report of the occurrence to PW 11, a peon in the Sidhaur Block. The report was carried to the police station by the Chowkidar at about 2.30 a.m. and was delivered at about 7.55 a.m. the next morning. The Head Constable PW 7 registered the crime and prepared the report. The Station House Officer, PW 10 after receipt of the report rushed to the spot reaching there in the afternoon. He held the inquest and sent the dead body for post-mortem. He examined the witnesses including PW 1 and also sent the injured witnesses to the doctor. PW 3, the doctor, conducted the post-mortem. He found several abrasions and contusions all over the body. On internal examination he noticed the fracture of thyroid cartilage on both sides and fracture of larynx. He opined that the death was due to asphyxia as a result of strangulation and on account of the pressure on the neck he specifically stated that the death could be caused if a lathi was pressed on the neck of the deceased from both sides. PW 9, another doctor, examined the injured witnesses. On Moharram Ali, the brother of the accused (sic deceased) who is not examined, the doctor found 14 injuries namely abrasions and contusions all over the body. On Munney, another inmate who was not examined he noticed five injuries. On PW 8 the doctor found 13 injuries namely abrasions and contusions. The other labourers who received injuries were also examined by him. One Dr. Negi examined PW 2 and he found 15 injuries on him, a large number of them being contusions. PW 4 was also injured and on him 15 injuries were found. After completion of the investigation, the charge-sheet was laid. The prosecution examined 11 witnesses. Out of them PWs 1, 2, 4 and 8 figured as eye-witnesses and amongst them PWs 2, 4 and 8 are injured witnesses. The accused pleaded innocence and their main defence was that they were falsely implicated. The trial court accepted the defence version that there was a dacoity in the house of the deceased and that the prosecution has not succeeded in proving the guilt, the time of occurrence and the manner of the execution of the crime beyond reasonable doubt and accordingly acquitted all the accused. The evidence of PWs 2 and 4 was rejected on the ground that the former was an employee of the deceased and later was a permanent labourer. He also discarded the evidence of PW 8 on the ground that he is the real brother of the deceased. The learned Sessions Judge observed that the evidence of the eye-witnesses was not consistent in naming the culprits in the statements made in the course of the investigation and in the evidence during the trial. The High Court, on the other hand, held that the specific overt acts of the three appellants and two others Gajju and Adharey were established but Gajju died during the pendency of the appeal. Therefore the appeal abated against him and Adharey died after the committal of the case. The High Court accordingly convicted these three appellants. With regard to the other accused they are given benefit of doubt by the High Court particularly to eliminate all possibilities of innocent men being roped in. The learned Judges took the view that specific overt acts are attributed to these three accused and

that their guilt is established beyond all reasonable doubt and accordingly convicted them.

3. In this appeal, as mentioned above, the learned counsel submitted that there was delay in giving the earliest report and it was not lodged at the time mentioned in it but much later after due deliberations. PW 1, the wife of the deceased, whose presence cannot be doubted at the scene of occurrence, dictated the report to PW 11 at about 7 p.m. We have perused the evidence of PW 11 and there are no grounds whatsoever to doubt his veracity. According to the entry in the general diary the report was handed over in the police station at about 7.55 a.m. Having regard to the nature of the occurrence and the commotion that would have been created during the night, one cannot expect the persons concerned to go to the police station on that very night. PW 1 has asserted consistently that she handed over the report at about 2.30 a.m. to the Chowkidar and the same reached the police station at 7.55 a.m. which is about 6 miles away. Therefore, we agree with the High Court that there was no inordinate delay. At any rate mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication. We have perused the report. All the material particulars are mentioned and coming to the attack on the deceased it is clearly stated that accused 1 put bricks underneath the neck of the fallen deceased and then a lathi was kept on the throat and pressed from one end by accused 1 and 12 and from the other end by accused 9 and Adharey resulting in the death of the deceased. It can therefore be seen that it is clearly mentioned that the deceased died due to strangulation by pressing the lathi on the throat. If the eye-witnesses have not really witnessed this incident they could not have imagined about the cause of death by merely looking at the external injuries. The doctor who conducted the post-mortem found that the thyroid cartilage and larynx were fractured because of the strangulation. The doctor also corroborated this version namely that the asphyxia was caused due to strangulation by putting a blunt lathi and pressing the same on the throat. Therefore so far as this part of the occurrence is concerned, it can by no stretch of imagination be said that it is a fabricated one. Unless the witnesses were present and witnessed the occurrence they could not have imagined and mentioned the same in the earliest report. We therefore do not find any merit in this submission namely that the earliest report is a fabricated one. The specific overt acts attributed to accused 1 and 12 namely that they caught hold of one end of the lathi while other two caught hold of the other end and pressed the same on the throat of the deceased, have been consistently mentioned right from the stage of giving the earliest report. There are absolutely no discrepancies and the High Court has carefully considered this part of the evidence and has rightly held that guilt of accused 1 and 12 is established beyond all reasonable doubts. So far as Chauhan, accused 11 is concerned, the only overt act attributed to him is that he prevented PW 1 from going to the rescue of her deceased husband. The High Court noted that accused 11 did not physically participate but, however, found him guilty on the principle "they also serve who stand and wait".

4. Having carefully considered the facts and circumstances, we are of the view that the case of accused 11 is the same as that of other acquitted accused. At one stage the High Court observed : "The overt act proved against a particular accused may reinforce the testimony of the witness." Having regard to the nature of the overt acts attributed to accused 11 we think it may not be safe to convict him. Accordingly he is given benefit of doubt. The prosecution has proved that about 20 persons both identified and unidentified formed into an unlawful assembly. However, the conviction of appellants 1 and 3 (accused 1 and 12) Zahoor and Sant Ram does not warrant interference. In the result this appeal is allowed so far as Chauhan, appellant 2 (accused 11) is concerned and dismissed as against other two appellants 1 and 3 (accused 1 and 12) Zahoor and Sant Ram.

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