Malkhan Singh and others

Vs

State of U.P.

Criminal Appeal No. 516 of 1980

(K. Ramaswamy, S. Mohan JJ)

30.01.1992

JUDGMENT

1. The appellants are A-1, A-4 and A-5, Malkhan Singh, Vishwanath Singh and Vishram Singh. They along with four others were charged with an offence under S. 302 read with S. 149 and other offence. The trial court convicted six accused. The case was separated as against one Hardas who has been absconding. They were convicted under S. 302, IPC read with Ss. 149 and 148 and sentenced to undergo rigorous imprisonment for life and rigorous imprisonment for two years respectively. In addition A-1 also was convicted for an offence under S. 404, IPC and was sentenced to undergo rigorous imprisonment for one year. All the sentences were directed to run concurrently. On appeal, the High Court confirmed the convictions and sentences of the appellants. It acquitted Raghunath Singh, Tahar Singh and Gajraj, A-2, A-3 and A-6 respectively. Their acquittal appears to have become final since the State is not able to state Whether it filed any appeal. Therefore, we are concerned with the appellants in this case.

2. It is the case of the prosecution that Jawaharlal, the deceased, PW 1 Motilal, PW-3 Rameswar were going together in a. Tonga to Atta. When they reached near the bus stand at Atta, at about 9.00 a.m. the appellants and others stopped the Tonga. A-1 exhorted others to attack the deceased. Thereon the deceased, PW- 1 and PW 3 jumped out from the Tonga and the deceased started running towards the land of Bharat Singh. A-1 shot at him and thereafter A-2 also shot at the deceased. Subsequently A-1 again shot at the deceased. A-4 and A-5 attacked him with knives. PW I and PW 3 ran helter skelter. PW 1 ran towards the Police Station and submitted a report Ex. kha. 2 to the S. H. 0. PW 6 at about 10.30 a.m. Thereafter the S.H.O. investigated the offences and apprehended some of the accused and some of them surrendered in the Court. Though in the F.I.R. the presence of number of witnesses has been mentioned, ultimately PW 1, PW 3 and PW4 were examined as eye-witnesses. The trial court and the High Court disbelieved the evidence of PW 4. The High Court found, as a fact, that PW 3 is an independent witness. He has no axe to grind against the appellant. His evidence corroborated the evidence of PW 1. The High Court believing that the 8 gun shots injuries are only as a result of two shots which were said to have been given by A- 1, acquitted A-2. A-3 and A-6 were also acquitted. We need not go into the reasons for their acquittal for the reason that we have no appeal against them before us, though we feel that the acquittal was not justified on the basis of the evidence on record. Shri A. K. Srivastava, learned counsel for the appellants has strenuously contended that the High Court having disbelieved the evidence of the direct witnesses as against A-2, A-3 and A-6 the substratum of the prosecution case has been knocked of its bottom, it is difficult to rely on the self same evidence to base conviction of the appellants. It is also contended that the independent witnesses have been cited in the F. I. R. and in the charge-sheet as well. The omission to examine them is fatal to the prosecution case and the appellants are therefore entitled to the benefit. Counsel laid emphasis on the evidence of the driver

of the Tonga who is direct and natural witness and the omission to examine him is fatal to the prosecution case. It is further contended that the medical evidence does not corroborate the evidence as regards the appellants' involvement is concerned and, therefore, the same benefit as extended to A-2, A-3 and A-6 should be given to the appellant as well.

3. He has taken us through the evidence on record and we have independently subjected the evidence of PW 1 and PW 3 to critical examination. The High Court has carefully analysed the evidence of PW 1 and PW 3. It has given cogent reasons to accept the evidence of PW 3 as an independent witness. Even now also we are not persuaded to differ from the conclusion reached by the High Court that PW 3 is an independent witness. No doubt PW 1 is related to the deceased and had some enmity towards the appellants, but his evidence, though partisan, his presence cannot be disputed for the reason that PW 1, PW 3 and the deceased together travelled in the Tonga. He himself had given the report to the police immediately after the occurrence within one hour and had graphically described the occurrence therein. As of fact we found it to be a detailed one. In these circumstances the evidence of PW 3 and PW 1 cannot be disbelieved on any ground. Though PW 1 is enimical towards the appellants, it should be considered with anxious care to find whether it inspires confidence to be acceptable. It is not the law that all the witnesses cited by the prosecution as direct witnesses need be examined. The prosecution must unfold the full narration of the material. particulars of its case. It is not the quantity but quality of the evidence that is needed. It is settled law that even the evidence of a single witness, if truthful and found acceptable, would form basis to convict the accused without corroboration which is not a rule but an added assurance. The witness must be reliable to inspire confidence for acceptance of his evidence. It is, therefore, not necessary to examine all the other witnesses unless the prosecution so chooses. We find no force in the contention of the appellants in this behalf. We have also seen the medical evidence. Medical evidence in fact corroborates the evidence of PW 1 and PW 3. There are as many as 8 injuries and injuries Nos. 9-10 are exit injuries. Injuries Nos. 6-8 are the gunshot injuries caused by more than two shots. Merely because A-2 was acquitted, it does not mean that the injuries were not caused by the gun-shot by the appellants as well. As regards A-4 and A-5 are concerned, there are as many as 5 incised injuries and it is the prosecution case that they inflicted these injuries after the deceased had fallen down. Medical evidence corroborates the ocular evidence of PW 1 and PW 3. Considered the evidence from this perspective, we are of the view that both the courts have correctly appreciated the evidence and we find no reasonable ground to doubt the prosecution case of PW 1 and PW 3. It is next contended that the medical evidence is not sufficient to base the conviction of the appellants alone for an offence under S. 302 read with S. 149. We find absolutely no substance in this contention. The appellants and others were lying in wait; on seeing deceased A-1 and PW 1 and PW 3 coming in Tonga exerted others to attack the deceased. A-1 shot at and A-4 and A-5 attacked fallen deceased with knives and inflicted 5 incise injuries. They shared the common object/ intention and they left together. The injuries are very grave injuries which are sufficient to cause death in the ordinary course of nature. Therefore the offence comes within the four corners of S. 300. Their case cannot be brought under any one of the exceptions engrafted under S. 300. The conviction under S. 302 read with S. 149 at any rate read with S. 34 is sustained. The appeal is therefore dismissed. Their bail bonds are cancelled and the appellants shall surrender to undergo the remaining part of the sentence. Appeal dismissed.

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