

Ram Milan and others

Vs

State of U.P.

Criminal Appeal No. 400 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

07.04.1992

JUDGMENT

1. Eight accused were tried by the learned Additional Sessions Judge, Faizabad for offences punishable under Sections 147, 148, 452 and 302 and 307 read with Section 149, I.P.C. and 323 and 324 read with S. 149, I.P.C. The case arose out of an occurrence in which both sides received serious injuries. On the prosecution side one Kam Hazoor succumbed to his injuries. The prosecution examined five witnesses. On accused side there was a complaint to the Police and a case was registered. While it was the prosecution case that the accused were aggressors, the case of the defence was that the prosecution party attacked them while they were protecting their mango-trees by way of fixing pegs. The learned trial Judge after having discussed the entire evidence and having considered the material on record and taking into consideration various circumstances including the fact that the injuries on the accused have not been explained, acquitted all the accused. He held that the prosecution has not come forward with the whole truth and the genesis of the occurrence has not been put forward in its true form. Aggrieved by the said order of the acquittal the State preferred an appeal to the High Court. A Division Bench of the High Court while confirming the acquittal of three of the accused convicted the remaining five accused under Ss. 147, 148, 323 and 324 read with Section 149, I.P.C. Two of the accused Ram Milan and Ram Chandra were further convicted under Section 326 read with S. 34, I.P.C. and sentenced to undergo 7 years' Rigorous Imprisonment. They were also awarded one year's rigorous Imprisonment under Section 148, one year's Rigorous Imprisonment under Sections 323/149 and one and a half years' rigorous imprisonment under Ss. 324/ 149 respectively. The sentences were directed to run concurrently. These five accused before the High Court were also sentenced to various amounts of imprisonment and fine. The convicted accused have preferred this appeal.

2. It is well-settled that the Appellate Court should be slow in reversing the order of acquittal and unless there are good and strong grounds the acquittal should not be interfered with. We find from the judgment of the High Court that there is no detailed discussion of the evidence of the five witnesses. In this case we are of the view that it may not be necessary for us to consider the evidence in detail. Taking the broad features of the case into consideration, we find that the prosecution has not come forward with the whole truth. Admittedly there was a fight. The version of the prosecution is at variance with the version of the defence. The fact remains that the time of occurrence is one of the same, therefore, it is but reasonable to infer that the occurrence must have taken place at a particular place. The trial Court has held that the defence version appears to be probable. One important feature in this case is the presence of the serious injuries on the four of the accused persons who are the appellants before us. The High Court appears to have proceeded on the

footing that the presence of the injuries on the four accused shows that they must have been present at the scene of the occurrence and must have participated in the occurrence. The real question, therefore, is who are the aggressors. The trial Court after having elaborately considered the entire material rightly observed that the prosecution has not satisfactorily explained about the injuries suffered in the incident by not less than four accused persons. Injuries on them were serious and some of them were incised injuries. In the absence of any explanation given by the prosecution naturally an adverse inference has to be drawn. In such a situation the defence version cannot be brushed aside. It is not necessary for the accused to prove the case but if a reasonable doubt arises the benefit of the same should go to the accused.

3. We find that the High Court has not given any reasons as to why the view taken by the trial Court should be rejected. The Appellate Court while reversing the order of acquittal has to consider the entire evidence in detail and give cogent and convincing reasons as to why an interference is warranted. On the other hand, we find that the High Court mainly seems to have proceeded on the footing that the presence of injuries on some of the accused by virtue of the fact that the injuries were found on them establishes the members of unlawful assembly. It may be treated that the presence can be accepted but the important question is as to how they are culpable particularly when they come forward with a plausible explanation by giving a report about the occurrence at the earliest moment. After a careful examination of the entire materials we are satisfied that the prosecution has not come forward with the whole truth. The prosecution at the most has established that an occurrence has taken place in which some persons on either sides received injuries. No explanation was given as to how four accused happened to receive injuries. In such a situation the version given by the defence cannot be rejected. Consequently a grave doubt arises about the credibility and truthfulness of the version put forward by the prosecution. Consequently we are constrained to allow this appeal. The convictions and sentences awarded against the appellants are set aside. The appeal is allowed accordingly.

Appeal allowed.

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