State of U.P.

Vs

Vad Narain

Criminal Appeal No. 194 of 1981

(S. R. Pandian, R. M. Sahai JJ)

23.07.1992

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1.The State of U.P. on being dissatisfied with the judgment of the High Court of Allahabad rendered in Criminal Appeals Nos. 253 and 256 of 1979, setting aside the conviction of the appellant under S. 302 read with S. 34, IPC. and the sentence of death imposed by the Trial Court, has preferred this appeal. It may also be pointed out in this connection that the reference under S. 366 of the Code of Criminal Procedure made by the learned Sessions Judge which was numbered as Capital Sentence Case No. 7 of 1979 for the confirmation of the death sentence under S. 366 of the Code of Criminal Procedure has been rejected by the High Court.

2. The respondent Vad Narain and 8 others were charged on the allegation that on 24th March 1978 at about 9-10 P.M. in the village called Saurmau P. S. Kotwali in Sultanpur formed themselves into an unlawful assembly and in prosecution of the common object the said unlawful assembly the respondent, Vad Narain, committed the murder of Narender Pratap Singh, the deceased herein, by stabbing with a knife and they also caused the evidence of the commission of that offence of murder to disappear with the intention of screening the offenders from legal punishment by throwing the body in a canal. Or the above allegations the respondent and 8 others were tried for offences punishable under Sections 147, 148, 302 read with S. 149, IPC and under S. 201, IPC. The Trial Court convicted the respondent alone under S. 302, IPC read with S. 34, IPC and S. 201 and sentenced the respondent to the extreme penalty of law, namely, the death and also under S. 201, IPC to four years rigorous imprisonment respectively with the direction that the sentence of four years rigorous imprisonment should merge with the sentence of death. However, the Trial court found the other 8 accused not guilty of the offence and acquitted them. It was only by way of challenging the conviction and sentence, the respondent preferred his Jail Appeal No. 253/79 and another appeal No. 256/79 through his counsel and the reference was made as above mentioned by the Trial Court. The High Court rendered its common judgment in both the appeals and the reference case which is under challenge.

3. The learned counsel appearing for the appellant took us through the recorded evidence and strenuously contended that the High Court has overlooked certain impelling circumstances attending the case and recorded the impugned order of acquittal which is liable to be interfered with at the hands of this Court.

4. It appears from the records that the mother of the deceased has spoken to the fact that she found her deceased son being taken out of the house by the respondent and that her deceased son at the time when he left the house took some snacks. To prove the charge the prosecution examined PWs. 3 to 7 as direct witnesses. In fact the Trial Court itself has found that the evidence of all the so-called eye-withesses, namely, PWs 3 to 7 is absolutely incredible. Coming to the evidence of PW 3 the Trial Court rejected his evidence as absolutely unworthy of credence, observing:

> "The evidence of this P.W. does not inspire confidence and I have no hesitation in rejecting it."

5. PW-4's evidence was rejected as unworthy of acceptance. Coming to the testimony of PW-5, the Trial Court observed that his evidence does not inspire confidence. As regards the evidence of PW-6, the finding of the Trial Court is that PW-6 has been introduced to serve as eye-witness. Lastly as regards the evidence of PW-7, the Court held thus:

> "I am of the view that the facts and circumstances as emerge out of his evidence cast serious doubt on his credibility and I disbelieve him altogether."

6. It may also be noteworthy that the Trial Court has made an aspersion against the first investigating officer which reads thus :

> "The first I.O. in this case did not act as an intelligent police officer otherwise the real accused could not have gone with impunity. The direct evidence was introduced as assurer and safer course for conviction, but that did not withstand scrutiny and that direct evidence was found absolutely fabricated and therefore unacceptable."

7. Having observed this that the evidence of PWs 3 to 7 was absolutely fabricated and unacceptable and that the first I.O. did not act as expected, the Court found the respondent guilty observing thus:

> "Luckily for the prosecution the other 1.0. was there whose investigation was above board and on the basis of his investigation at least, guilt of accused Vednarain alias Chhotkau is established."

8. The reason given by the Trial Court for recording the conviction has been rightly rejected by the High Court. In fact the High Court carefully analysed the circumstances appearing in this case which might have very much weighed with the Trial Court and has rightly held that these circumstances do not compel the High Court to arrive at a conclusion that the respondent is guilty of the offence.

9. We, after scrutinising the evidence of PW-2 that the deceased after taking snack went out in the company of the respondent, hold that PW-2's testimony is totally unacceptable as the stomach of the deceased was found empty during post-mortem. The alleged recovery of the two bundles containing blood-stained bricks and parts of motor bike will not in any way improve the prosecution case, establishing the guilt of the respondent. On the basis of these two above circumstances no inference can safely be drawn that the respondent caused the death of the deceased especially when the direct evidence has been especially declared unworthy of credence even by the Trial Court.

10. In the result the State appeal is dismissed. The bail bonds are discharged. Appeal dismissed.

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