

Annaporna Dutt and Others

Vs

State of U.P.

Criminal Appeal No. 633 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

24.09.1992

JUDGEMENT

G. N. RAY, J.:-

1. This appeal is directed against the Judgment and Order dated December 13, 1979 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Appeal No. 469 of 1978. The said Criminal Appeal arose out of the Judgment and order dated June 22, 1978 passed by the learned Sessions Judge, Sultanpur, in Sessions Trial No. 36 of 1978. In the said Sessions trial, the accused No. 1, Devi Dutt, and the accused No. 5, Annaporna Dutt (appellant No. 1 herein), were charged under Ss. 148, 302/149, 325/149, 324/ 149 and 323/149, I.P.C. The rest of the 15 accused persons were charged under Ss. 147, 302/ 149, 325/ 149, 324/149 and 323/149, I.P.C. Seven of the accused persons, namely, accused Nos. 4, 11, 12, 13, 15, 16 and 17 were acquitted of all the charges framed against them by the learned Sessions Judge. But the other accused persons were held guilty on different counts and were convicted to undergo rigorous imprisonment of different terms as indicated in the Judgment and order of the learned Sessions Judge. Against such Judgment of the learned Sessions Judge, Devi Dutt and these nine appellants preferred an appeal in Allahabad High Court, Lucknow Bench, being Criminal Appeal No. 469 of 1978. Such appeal was disposed of by the Allahabad High Court, Lucknow Bench, on December 13, 1979 and the High Court allowed the appeal of Devi Dutt and his conviction and sentences ordered by the learned Sessions Judge on several charges were set aside, but the appeal of the nine remaining accused who are appellants in this appeal, were allowed in part. The High Court set aside the conviction and sentence of all the nine appellants under Part I or Part II of Section 304 read with Section 149, IPC but the conviction of the said nine appellants was upheld under Ss. 325/ 149, 324/149 and 323/149, IPC., and each of the said appellants was awarded sentences of rigorous imprisonment for a period of two years, one year and nine months respectively. So far as the appellant, Annaporna Dutt is concerned, his conviction under Section 148, IPC was affirmed by the High Court but instead of two years' rigorous imprisonment as ordered by the learned Sessions Judge, the High Court awarded a sentence of rigorous imprisonment for one year. The conviction under S. 147, I.P.C. in respect of the appellants other than Annaporna Dutt was also maintained by the High Court but the sentence of rigorous imprisonment, for two years was reduced to rigorous imprisonment of nine months. The High Court directed that all the sentences awarded against each of the said appellants would run concurrently. It may be stated that appellants Nos. 1, 2 and 3 in this appeal, namely, Annaporna Dutt, Uma Dutt and Kanhaiya, are residents of village Pure Gurdin and appellant Nos. 4 to 8, namely, Ishwar Dutt, Sant Kumar, Ram Sunder, Lalan, Pratap are residents of village Gogmau and appellant No. 9, Onkar Nath, is the resident of village Uiara. The village Pure Gurdin and Gogmau

are within the Police Station Jagdishpur in the District of Sultanpur but the village Ujara is within the Police Station, Musafirkhana, District Sultanpur, all in the State of Uttar Pradesh.

2. The prosecution case in short is that on June 30, 1977, at 10.00 a.m. an incident of assault and trespass had taken place in village Pure Gurdin where the three appellants reside. The deceased, Babulal and his relations had cut 13 bamboos from a clump situated in that village and they had stocked those cut bamboos on the back side of the house of Ram Prasad Tewari with an intention to use those bamboos for raising a thatch. All of a sudden, the said nine appellants along with Devi Dutt and the other seven persons since acquitted by the learned Sessions Judge came to the place where the said bamboos were stored. Devi Dutt was armed with a spear and appellant No. 1, Annapurna Dutt, had a pharsa. The said persons started assaulting Babulal and his companions. Thereafter the accused persons ran away. Besides Babulal, Bishambhar (P.W. 1), Tribeni Prasad (P.W. 4), Jagdamba (P.W. 5) and Brahma Dutt also received injuries at the hands of the accused persons. The report of the occurrence was lodged at Jagdishpur Police Station at 7.00 p.m. on the same day by Durga Prasad. Dr. L. M. Chaudhary, Medical Officer, P.H.C. Jamo, examined the said injured persons and he noted an incised wound on the head on left side 10 c.m. above left earlobe and the swelling on the left eye ball on the person of deceased, Babulal. According to the opinion of the said Medical Doctor, the injury No. 1 on the person of Babulal was caused by a sharp cutting weapon and injury No. 2 by blunt weapon. Tribeni was found to have suffered two perforated wounds above his right eye besides three other injuries caused by blunt weapon. Bishambhar had six injuries caused by blunt weapon and injuries on Brahma Dutt and Jagdamba, as found by the said doctor, were stated to have been caused by the blunt weapon. Babulal, however, succumbed to his injuries and the post mortem examination was held by Dr. N. A. Khan who had noted an incised wound, two traumatic swellings and three abrasions all ante mortem in nature. Left parietal and frontal bones in left orbital region and left temporal bone under external injuries Nos. 1, 2 and 3 were found to have been fractured. In the opinion of Dr. Khan, the death of Babulal was caused due to coma resulting from the head injuries.

3. The accused persons including the appellants pleaded not guilty and denied the allegation of assault made by the prosecution. It may be noted that the appellants did not put any definite suggestions about their injuries and they did not lead any oral evidence in their defence. The prosecution, however, relied upon the testimony of five eye-witnesses, namely, Bishambhar (P.W. 1), Ram Prasad (P.W. 2), Tribeni (P.W. 4), Jagdamba Prasad (P.W. 5) and Durga (P.W. 8). Out of the said five eye-witnesses, P.W. 1, P.W. 4 and P.W. 5 received injuries as indicated hereinbefore. One of the eye-witnesses, namely, Durga (P.W. 8), however, stated that he had falsely implicated seven accused persons. Accordingly, the said seven persons were acquitted by the learned Sessions Judge. The learned Sessions Judge accepted the evidences of the said eye-witnesses including the injured eye-witnesses and as the said eyewitnesses had stated that the appellants and the said Devi Dutt were parties to the assault, the learned Sessions Judge had convicted all of them and sentenced all the said accused persons on different counts which have been referred to hereinbefore. The High Court inter alia came to the finding that the deceased Babulal and three injured eye-witnesses, namely, Tribeni Prasad, Bishambhar, Jagdamaba and also Brahma Dutt were assaulted as alleged by the prosecution because such case of assault and the time alleged by the prosecution was established by the injuries found on their persons. The High Court inter alia came to the finding that there was no counter version by the defence and the learned Sessions Judge was justified in coming to the conclusion that the deceased Babulal and the said four persons were assaulted by blunt and sharp cutting weapon at the time of occurrence as suggested by the prosecution and Babulal had died as a result of head injuries received by him. The High Court noted that Durga (P.W. 8) lodged the first information report and the said Durga and Ram Prasad (P.W. 3) were independent witnesses. The High Court

also noted that although the said witnesses implicated seven other persons with the said incident of assault but on the admission of Durga it transpired that they were falsely implicated. The learned Sessions Judge had, therefore, acquitted the said seven accused persons. The High Court observed that simply because such false accusation was made by the said independent witnesses in respect of seven accused persons, their evidences are not liable to be rejected outright but their evidences were required to be considered with caution. The High Court indicated that despite the fact that some innocent persons were falsely implicated by the eye-witnesses, the statements made by the said eye-witnesses may be relied on if on scrutiny it would transpire that the participation of the appellants and the said Devi Dutt who were appellants before the High Court in the offences alleged was established. Having noted the fact that at least 20 injuries were received by the five victims on the side of the prosecution, it was held by the High Court that it was quite likely that 9 or 10 persons had taken part in assault as alleged. The High Court also noted that the said incident of assault had taken place in broad day light. Having accepted the evidences of the said eyewitnesses about the participation of the appellants, the High Court was of the view that the case against them was established by the prosecution. The High Court, however, noted that one of the eye-witnesses stated that Devi Dutt was armed with the spear and participated in the act of assault but another witnesses, Ram Prasad, stated that Devi Dutt had no weapon in his hand. Since Ram Prasad was not declared as a hostile witnesses and as there was no reason to reject his evidence, so far as Devi Dutt was concerned, the High Court was of the view that it was quite probable that Devi Dutt did not take part in the act of assault but he arrived at the time of occurrence only out of anxiety, particularly when he had no weapon in his hand and he could not have participated in the assault. In that view of the matter, the High Court held that Devi Dutt was entitled to the benefit of doubt. The High Court accordingly acquitted the said Devi Dutt of all the charges and set aside his conviction and orders of sentences passed by the learned Sessions Judge. The High Court, however, held that there was no doubt about the participation by the appellants in the commission of the offences alleged against them and such participation also got corroboration from the medical evidence. The High Court held that there was, however, no justification in convicting the appellants under Section 304, Part I or Part II, IPC. According to the High Court, the facts and circumstances only indicated that the common object of the unlawful assembly formed by the said appellants was at the most to cause grievous hurt to the deceased and other injured persons but not to cause murder of anybody. In this respect, the High Court noted the deposition of P.W. 1, Bishambhar, that the fatal injury on Babulal was caused by chance. In that view of the matter, the conviction and the sentences against the appellants under Section 304, IPC was set aside. The High Court held that conviction and sentence of two years' rigorous imprisonment for the appellants under Section 325/ 149, IPC, conviction and sentence of one year's rigorous imprisonment under Section 324/ 149, IPC and nine months' rigorous imprisonment under Section 147, IPC would meet the end of justice. The High Court also held that conviction and sentence of one year's rigorous imprisonment under Section 148, IPC would also be adequate punishment in the facts of the case. Accordingly, Devi Dutt was acquitted. The appeal of the appellants was allowed in part and the conviction and sentences passed by the learned Sessions Judge were modified to the extent indicated hereinbefore. As aforesaid, the instant appeal has been preferred by the appellants against the said Judgment and order passed by the Lucknow Bench-of the Allahabad High Court.

4. The learned counsel for the appellants has very strongly contended that there had been a long standing dispute over some landed property between Bishambhar and his wife, Kamla, on one side and Devi Dutt on the other side. It may be stated that accused Devi Dutt who was later on acquitted by the High Court is related to Kamla very closely. The learned counsel for the appellant has contended that in view of long standing dispute between the two groups a false attempt was made

by the prosecution to implicate Devi Dutt and his three sons, namely, the appellants Nos. 1 to 3 and other accused persons. The learned counsel has contended that it is unbelievable that 17 persons would resort to wanton act of trespass and assault including murderous assault on a number of persons unnoticed by the independent villagers. He has submitted that the two witnesses who are not related and held to be independent witnesses by the High Court were not really independent witnesses but they all belonged to the side of the prosecution. The learned counsel has contended that the first information report was lodged at a belated stage thereby making it quite probable that a false case was cooked up in the meantime. He has submitted that the veracity of the alleged eyewitnesses cannot be accepted in view of the admitted finding made by the learned Sessions Judge and also by the High Court that the said eye-witnesses had deliberately implicated innocent persons because of partisan attitude. The learned counsel for the appellants has submitted that an alleged independent witness was constrained to admit at the trial that he had falsely implicated as many as seven innocent persons. The deposition of the said witness for prosecution since held to be an independent eye-witness clearly establishes that the other alleged eye-witnesses were also partisan and over jealous and they had also been making false statements. The learned counsel has contended that the High Court felt the difficulty in basing the conviction against the appellants in the aforesaid circumstances but then proceeded on the footing that simply because the said eye-witnesses had made false statements and tried to implicate innocent persons, their depositions were not liable to be rejected outright and their depositions in establishing the complicity of the appellants in the commission of crime alleged against them could be accepted. The learned counsel for the appellants has contended that it is not the question of accepting the evidences of the alleged eyewitnesses in part only. When it transpires that the said eye-witnesses were not truthful and they had introduced false stories, the veracity of the said persons stand completely knocked and no reliance should have been placed on their testimony. The learned counsel has contended that it is on the basis of the evidences of the said alleged eye-witnesses, the case of the prosecution has been accepted and the convictions were upheld by the High Court. The learned counsel has further submitted that the anxiety to falsely implicate Devi Dutt, his sons and other accused persons becomes apparent from the fact that although Devi Dutt was unarmed and had no occasion to take part in the assault since upheld by the High Court, a case was sought to be made out by the prosecution that the said Devi Dutt came with pharsa and inflicted injuries on the deceased and the other persons. The learned counsel has also contended that the import of the application submitted by Debi Prasad, brother of P. W. 1, Bishambhar, to the DIG Police and Chief Minister containing a different account of the alleged incident has not been appreciated by the courts below. The said letter demolishes the prosecution case and in the backdrop of the facts and circumstances, the statements contained in the letter should have been accepted. He has submitted that it is really unfortunate that Babulal had died because of the injuries suffered by him and some of the witnesses for the prosecution had also suffered some injuries but such factum of death and the injuries on the persons of some of the witnesses for the prosecution do not establish that the assault as alleged by the prosecution was committed by the accused/ appellants. It is quite probable that the injuries had been suffered in a different manner but the truth was deliberately suppressed by, the prosecution and in their anxiety to implicate Devi Dutt, his sons and other accused persons, a story was cooked up but at the trial the falsity of the story got revealed. He has, therefore, submitted that no conviction on any of the appellants was warranted on any of the charges as found by the High Court and it is pre-eminently a fit case where this Court should hold that these appellants are absolutely not guilty and they should be acquitted of all the charges made against them and their convictions and sentences should be set aside.

5. The learned counsel for the State has, however, submitted that the dispute over the land caused

bad relations between the parties which ultimately resulted in the said murderous assault and injuries inflicted on other persons. The learned counsel for the State has stated that it is unfortunate that there was some overdoing on the part of the prosecution and some persons were improperly implicated in the said act of assault and trespass. But on the whole the witnesses for the prosecution appear to be truthful. If there was a real intention for the prosecution to implicate Devi Dutt, his sons and other accused persons, the witnesses for the prosecution should not have made the statements that the deceased was hit by chance on the fatal part or Devi Dutt had no weapon in his hand. Such statements made by the eye-witnesses only indicate that they had been deposing truthfully and they were not tutored witnesses. The learned counsel for the State has also contended that the learned Sessions Judge and also the High Court, after considering the evidences of the eye-witnesses, have accepted their evidences so far as the complicity of these appellants is concerned. The High Court has given the benefit of doubt to Devi Dutt because of some contradictions in evidences adduced by the eye-witnesses. He has also submitted that in the locality where the incident had taken place there were three houses closely situated. If the incident had occurred in that area all of a sudden, it is not improbable that the same could not be properly noticed by the other residents of the village. He has submitted that the depositions of the eye-witnesses appeared to be trust worthy to both the learned Sessions Judge and the High Court. He has submitted that a very lenient view has been taken by High Court in the matter and whatever relief could be given in favour of the appellants has been given by the High Court. Accordingly, no interference is called for in these appeals.

6. After considering the facts and circumstances of the case and the submissions made by the learned counsel for the parties, we do not find any reason to take a view contrary to the view taken by the High Court. In justification of the findings made by the High Court, cogent reasons have been indicated. It also appears to us that all the contentions raised in the appeal were considered in the proper perspective and we have no hesitation in accepting the findings made by the High Court. In the facts of the case, the High Court was justified in holding that although there was some overdoing on the part of the prosecution in falsely implicating some of the accused persons, the evidences of eye-witnesses so far as the complicity of the appellants is concerned appeared to be convincing and were not required to be discarded. Such evidences also get support from the injuries suffered by the deceased and by some of the eye-witnesses for the prosecution. The existence of a dispute over landed property appears to be the cause for bad relations between the parties but simply because there is a dispute in respect of a landed property, the prosecution story is not required to be discarded outright on the footing that the witnesses for the prosecution were all partisan witnesses and had deposed falsely to implicate the accused persons. It appears to us that the High Court has taken into consideration the facts and circumstances of the case quite dispassionately and has given the benefit of doubt to the accused Devi Dutt because of the contradiction relating his complicity. In our view, the High Court has taken a very reasonable view in holding that, despite the death of Babulal, the accused had no intention to cause murder of the said Babulal or any other injured persons but they had intended to assault them. Precisely for the said reason, the conviction and sentences passed by the learned Sessions Judge have been modified by the High Court and in the matter of sentences passed against the appellants, a very considerate view has been taken by the High Court. Accordingly, we do not find any reason to interfere with the conviction and orders of sentences passed against the appellants. The appeal, therefore, fails and is dismissed. The appellants were granted bail by this Court. The said bail bonds, therefore, stand cancelled and the appellants are directed to serve out the sentences. Appeal dismissed.

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