

Sita Ram and Others

Vs

State of U.P.

Criminal Appeal No. 264 of 1978

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

25.09.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J :-

1. This is an appeal under Section 379, Cr.P.C. read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act filed by 12 appellants. They are original accused Nos. 1, 3, 4 and 6 to 14. They along with six others were tried for offences punishable under Sections 147, 307/ 149, 302/149 and 325/149, I.P.C. Among them accused Nos. 7, 12 and 18 were tried under Section 148, I.P.C. also and A-1 Sita Ram was also tried under Section 25 of the Arms Act. The trial Court acquitted all of them. The State preferred an appeal and the Division Bench of the High Court convicted the appellants before us under Sections 302/ 149 and sentenced each of them to undergo imprisonment for life. They were also convicted under Sections 307/149 and sentenced to seven years R.I., under Sections 325/1149 and sentenced to five years R.I. and under Sections 379/ 149 and sentenced to three years R.I., A-1 was also convicted under Section 25 of the Arms Act and sentenced to one year R.I. The sentences were directed to run concurrently. The prosecution case is as follows.

The accused, the deceased and the material witnesses belong to Village Beti, District Pratapgarh. A piece of land bearing Plot No. 2110 belonged to the estate of Raja Bhadri. Bindeshwari Singh, the deceased in the case was the nephew of the Raja and also his Manager (Sarbarakar). On 8-10-1968 Bindeshwari Singh along with Munshi Mahabir Prasad P.W. 1, Jagannath, P.W. 12 and Lal Pratap Singh, P.W. 3 two sepoys of the estate, was getting the said field ploughed. Bindeshwari Singh had a double barrel gun with him at that time. A-1 Sita Ram came there and asked them not to get the above field ploughed saying that the land belonged to him and it was leased out to him. He was told by Bindeshwari Singh that the land belonged to the Raja and if he had any doubt he may get the field demarcated. A-1 went back to the village and came again at about 4 P.M. along with some of the accused all armed with lathis. They again requested Bindeshwari Singh and others not to get the field ploughed. In the meantime A-13 dealt a lathi blow on the head of Bindeshwari Singh and the gun in his hand fell down. Just then 20 or 25 persons armed with lathis, ballams and farsas emerged from the neighbouring field. Seeing them, Bindeshwari Singh and three others started running. They were chased and they were surrounded by the accused who started beating Bindeshwari Singh with lathis, ballams and farsas and he received serious multiple injuries and fell down on the ground and succumbed to the injuries on the spot. When Jagannath, P.W. 12 one of the sepoys asked them not to kill Bindeshwari Singh, three accused namely A-4, A-9 and A-10 who had lathis in their hands went near him and started beating him. P.W. 12 fell down and requested them not to beat further. P.Ws. 13

and 17 hearing the cries reached the place of occurrence. Seeing them the accused ran away. Munshi Mahabir Prasad, P.W. 1 made arrangement for a cot and handed over the dead body to the Manager of the Benti Farm. Thereafter he went to the Police Station, Kunda along with injured Jagannath P.W. 12 who gave a report which contained all the details. P.W. 3 Lal Pratap Singh also accompanied. A case was registered. P.W. 12 was sent to the hospital where he was treated by Doctor, P.W. 20 and he found on him 10 injuries. P.W. 22, S.I. took up the investigation. The accused were arrested and some recoveries including a gun at the instance of A-1 were effected. He sent the dead body of Bindeshwari Singh after inquest for postmortem. Dr. R.L. Nagar, P.W. 16 conducted the post-mortem and he found as many as 28 injuries all over the body. All of them were lacerated wounds or contusions except five punctured wounds on non-vital parts. The Doctor opined that the deceased died as a result of shock and haemorrhage. The prosecution examined 22 witnesses. Out of them P.Ws. 1, 3, 12, 13 and 17 figured as eyewitnesses. The accused denied their guilt. A-1 gave a statement explaining the circumstances. He stated that the piece of land did not belong to the Raja and it belonged to his nephew. Likewise the other accused also denied the offence and, stated in general that they were all falsely implicated. The trial Court acquitted the accused holding that two of the eye-witnesses were chance witnesses. The trial Court also pointed out some discrepancies in respect of the weapons, in the manner in which they were used, in the depositions of the other witnesses including P.W. 12, the injured witness. The trial Court, however, ultimately held that the witnesses examined are not such witnesses. on whom implicit reliance can be placed. In the appeal filed by the State, the Division Bench of the High Court held that the reasons given by the trial Court are highly unsound. The High Court however scrutinised their evidence and convicted the appellants after considering the prosecution evidence against each of them.

2. In this appeal, the learned counsel for the appellants submitted that the High Court while reversing the order of acquittal ought to have considered each reason given by the trial Court and even if an alternative view was possible, that was not a ground for the High Court to interfere and convict the accused.

3. To satisfy ourselves, we have gone through the evidence of the eye-witnesses as well as the medical evidence. There are five eye-witnesses i.e. P.Ws. Nos. 1, 3, 12, 13 and 17. P.W. 12 is an injured witness whose presence cannot be doubted. He has given the FIR at the earliest point of time. All the details are mentioned in the FIR. His evidence is corroborated by the evidence of P.Ws. 1 and 3 whose presence also is not in doubt. The evidence of P.Ws. 13 and 17 is also on the same lines. We do not think that their evidence should be rejected on the ground that they are chance witnesses as has been done by the trial court. They are agriculturists and there is nothing unusual for them to go to the fields. From a perusal of the records, the time and place of occurrence cannot be doubted. The cause that led to the occurrence cannot also be doubted. In such a situation when the presence of at least three of the eye-witnesses is not in doubt their evidence would be entitled to great weight particularly that of the injured witness P.W. 12. By way of careful scrutiny the High Court has considered their evidence against each of the individual accused and convicted only the appellants whose presence and participation had been proved beyond all reasonable doubts. Having gone through the evidence of these eye-witnesses we see absolutely no reason to come to a different conclusion.

4. However, coming to the nature of the offence we find it difficult to convict them under Sections 302/149, I.P.C. The Doctor, P.W. 16 who conducted the post-mortem, found 28 injuries. Only the first three lacerated injuries were on the head and punctured wounds Nos. 5, 6, 7, 11 and 12 were on the face but the Doctor did not find any internal damage. The doctor noted that the teeth were artificial and the denture was complete. Only three teeth of the denture were broken. The Doctor

even did not say that the injuries cumulatively were sufficient in the ordinary course of nature to cause death. There is no injury on any of the vital organs. This only shows that the common object of the unlawful assembly was only to belabour the deceased, the Manager of the Raja who was getting the land ploughed and according to the accused the ploughing was being done high-handedly. Under these circumstances we are of the view that it is not safe to convict the appellants under Sections 302/149, I.P.C. Accordingly we set aside their conviction under Sections 302/149, I.P.C. and sentence of imprisonment for life. Instead we convict them under Section 304, Part II, I.P.C. and sentence each of them to undergo seven years R.I. The other convictions and sentences awarded by the High Court are confirmed. The sentences are directed to run concurrently. The appeal is partly allowed. Appeal partly allowed.

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