

Ramdas and Another

Vs

State of M.P.

Criminal Appeal No. 862 of 1981

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

25.09.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. The two appellants herein were tried for the offence of causing the murder of Mangla, the deceased in the case under S. 302 read with S. 34, I.P.C. The trial Court acquitted them. The State preferred an appeal against the said order of acquittal. The High Court accepting the evidence of the two eye-witnesses P.Ws. 1 and 2 allowed the State appeal and convicted, each of the appellants under S. 302 read with S. 34, I.P.C. and sentenced them to undergo imprisonment for life. The prosecution case is as follows.

2. The first appellant Ramdas is the son of second appellant Nathu. On 29-9-75 the deceased Mangla went to the forest near village Rajapur for collecting fire wood at about mid day. The deceased had gone to the forest with Shyam Kumar, P.W. 1 and Nand Kishore P.W. 2. A little later in the afternoon P.Ws. 1 and 2 came running to Makra, P.W. 3, the brother of the deceased and informed him that the deceased had been killed with an axe by two shepherds who were residents of Village Basar. P.W. 3 and some other villagers went to the forest and found the deceased lying dead with two incised wounds on his neck. Stating these facts, the first information report Ex. P. 1 was given to the police. In that it was mentioned that P.Ws. 1 and 2 were the eye-witnesses. From the description given by the eye-witnesses the police arrested the two appellants. The eyewitnesses also stated that the accused were known to them by face but they did not know their names. After the arrest, the accused were put up for test identification parade mixed up with many others on 7-10-1975 in the presence of P.W. 6, a Magistrate and the eye-witnesses correctly identified both the appellants as the assailants of the deceased. The Doctor, who conducted the post-mortem, found two incised wounds which could have been caused by, an axe. The two incised wounds were found on the neck measuring 4" x 1" x 1 1/2" and 3' x 2" x 1" respectively. On internal examination the Doctor found that arteries were cut and he opined that the injuries were sufficient in the ordinary course of nature to cause death. The accused pleaded that they were not guilty. Their further plea was that they were known to the witnesses and the test identification parade was only a farce and they contended that the kanjads of Devendranagar used to steal away their goats and as the accused had forbidden them, they have falsely implicated the accused and that some others might have committed the murder of the deceased.

3. The learned Sessions Judge acquitted the accused rejecting the evidence of P.Ws. 1 and 2 holding that both the witnesses are minors and the version given by them is not a natural one, The learned

Sessions Judge observed that in such a situation P.Ws. 1 and 2 could have raised cries and the deceased also could have managed to escape by running away and the version of the witnesses that the deceased did not even raise cries and did not run away, does not appeal and does not appear to be probable. The learned Sessions Judge also pointed out that there was delay in giving the first information report.

4. In our view, the High Court has rightly held that the reasons given by the trial Court for acquitting the accused are absolutely untenable. We have gone through the, evidence. P.Ws. 1 and 2 are natural witnesses. If they wanted to falsely implicate the appellants herein nothing prevented them from mentioning the names in the first information report. On the other hand the fact that they mentioned that two persons of village Basar killed the deceased appears to be most natural. We have examined the evidence of the Magistrate, P.W. 6 and the identification proceedings and we did not come across any flaw. The two Witnesses are not at all interested in implicating the appellants falsely. The defence plea that since they prevented the Kanjads of Devendranagar from stealing the goats and that they got these accused falsely implicated through P.Ws. 1 and 2 is highly artificial and absolutely baseless. There are no merits in this appeal. Accordingly the appeal is dismissed. Appeal dismissed.

</html