

Sri Niwas

Vs

Ram Bharosey and others

Criminal Appeal No. 330 of 1983

(S. R. Pandian, S. Mohan, S. P. Bharucha JJ)

14.10.1992

JUDGMENT

1. This appeal is preferred by the appellant on being aggrieved by the judgment of the High Court of Allahabad allowing the Criminal Appeals Nos. 895, 978 and 979 of 1979 filed by respondents Nos. 1 to 3 challenging their convictions recorded by the trial Court and also against the order of dismissal dismissing the Criminal Revision No. 625 / 79 filed by the appellant before the High Court for enhancement of sentence, namely, praying for imposition of extreme penalty of law, i.e. death sentence to all the three respondents.

2. All the three respondents were put on trial before the trial Court to answer a charge under S. 304/34, IPC on the allegations that they in furtherance of their common intention caused the death of the deceased, Jagdish Sharan at about 10.00 A.M. on 29-5-1978. According to the prosecution, the deceased was attacked with a knife by the 1st respondent Ram Bharosey while the deceased was being held firmly by the 2nd and 3rd respondents. After the first respondent inflicted a number of injuries on the person of the deceased, the second and third respondents each armed with country made revolver shot at the deceased. After causing a number of injuries to the deceased, they all took to their heels.

3. The occurrence as stated to have been witnessed by PWs. 1, 2, 3 and 4 of whom PW 1 is the son of the deceased, PW 2 is the brother-in-law of the deceased, PW 3 is the cousin and PW 4 is a neighbour. According to these witnesses, while they were sitting in the house of the deceased, they heard a distress cry near the temple where this occurrence took place. They all rushed to the spot. At that time the second and the third respondents were coming out of the temple. On seeing them, they fired a shot. Though the witnesses attempted to secure them, they could not do so.

4. After the accused had escaped, PW 1 went to the Police Station and lodged the complaint. The case was investigated by PWs. 6 and 7. During the course of the investigation, they examined the eyewitnesses, drew a sketch of the scene of the occurrence, recovered some pellets and two wads from the scene and after completing the investigation, they filed charge-sheet against all the three respondents.

5. The trial Court accepted the testimony of PWs 1 to 4, convicted all the three respondents under Sec. 302/34, IPC and sentenced each of them to undergo imprisonment for life. All the three respondents filed separate appeals before the High Court. As we have already pointed out that the appellant, namely, PW 1 filed a Criminal Revision before the High Court for enhancement for

sentence. The High Court not accepting the testimony of PWs 1 to 4 in view of the inconsistencies with a medical evidence allowed the appeal and acquitted all the respondents giving the benefit of doubt to them. Consequently, the High Court dismissed the Revision also.

6. We have perused the medical evidence of PW 5 who conducted autopsy on the dead body of the deceased. The medical officer has found as many as 16 injuries of which injuries Nos. 1, 2, 4, 5, 6, 7 and 8 were all incised wounds. Injuries Nos. 9, 10 and 11 were abrasions. There was only one stab wound, namely, injury No. 3. Injuries Nos. 12 to 16 were gun shot wounds. With reference to injuries Nos. 1 and 2, the medical officer has stated in the postmortem certificate itself that these two injuries, namely, injuries Nos. 1 and 2 had completely cut the trachea, oesophagus at its level and nerves and vessels of left-side neck as well as the jugular and carotid blood vessels and nerves parallel to them. Most of the injuries, namely, Nos. 3 to 8 were all above the neck. The nature of the injuries indicates that these injuries could have been caused by a very formidable cutting instrument and not by a knife. The High Court in fact summoned the medical officer and the ballistic expert and examined them who also gave their opinion not consistent with the evidence of the ocular witnesses of the prosecution but stated that these injuries could not have been caused in the manner as spoken to by the prosecution witnesses.

7. We are also of the view that the oral testimony of the witnesses is irreconcilably in conflict with the medical evidence. At any rate, the prosecution has not placed the true picture of the occurrence before the Court without suppressing any part of it. Evidently this has warranted the High Court to give the benefit of doubt to the respondents and allow their appeals. We are in full agreement with the reasons given by the High Court and we do not see any justifiable and compelling reason to interfere with the order of the acquittal. At this juncture, we point out that the State has not preferred any appeal against the order of the acquittal before this Court and the appeal is directed by the complainant who is the son of the deceased.

8. For all the reasons stated above, the appeal is dismissed. Bail bonds are discharged.

Appeal dismissed.

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