

Vishram and others

Vs

State of M.P.

Criminal Appeal No. 192 of 1982

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

03.11.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. There are six appellants. They along with one Khaman were tried for the offences punishable under Sections 148 and 302, I.P.C. for committing the murder of Chandra Shekhar and his brother Kamal Kishore. The trial Court convicted the appellants herein and sentenced each of them to undergo two years' R.I. and life imprisonment respectively. The trial Court, however, acquitted Khaman as his name was not mentioned in the dying declarations. The appeal filed by the appellants was dismissed by the High Court. Hence the present appeal.

2. The prosecution case is that all the accused, the two deceased and the material witnesses P.Ws 1 to 5 belong to Village Gidpuri in Bilaspur District. There are two residential colonies called Mahal No. 1 and Mahal No. 2. The distance between the two Mahals is about a furlong or two. The two deceased persons were the sons of P.W. 1 Bhagwati Prasad who lives in Mahal No. 2. The appellants live in Mahal No. 1. The appellants were breeding cattle. A week before the day of occurrence, the cattle belonging to Khaman, the acquitted accused, trespassed into the field of P.W. 1. Chandra Shekhar, one of the deceased persons, wanted to take the cattle to the cattle-pond but Khaman requested him to release the cattle and said that he would pay Rs. 40/- as compensation for the damage done to the crops. When Khaman did not come with the money, he was sent for and he was brought to Chandra Shekhar. On demand of compensation being made, Khaman said that a panchayat was being convened in Mahal No. 1 and that he would get the compensation determined through Panchas. Thereupon in the early morning of 21-11-79. Chandra Shekhar, the deceased accompanied Khaman. The appellants were waiting for Chandra Shekhar to come. As soon as he came they opened an assault on him and attacked him with lathis. When he was running he was chased and Chandra Shekhar took shelter in the house of P.W. 2 Thanuram. But the appellants forced their entry into the house and beat Chandra Shekhar severely who became unconscious and died after an hour. Kamal Kishore, the other deceased and brother of Chandra Shekhar who followed him, saw his brother being beaten and he tried to intervene. The appellants also attacked him and injured him seriously. The incident was witnessed by P.W. 2 Thanuram and his wife P.W. 3. P.W. 1 who was out of the village returned at about 8 a.m. and asked his wife where his sons had gone. P.W. 5 wife of Kamal Kishore told him that Chandra Shekhar had gone to Mahal No. 1 followed soon after by Kamal Kishore and that she learnt of some harm being done to them. Whereupon P.W. 1 rushed to Mahal No. 1 and saw P.W. 2 at his house who told him that Chandra Shekhar had been chased by the appellants and was assaulted by lathis and that Kamal Kishore was also attacked by the appellants. P.W. 1 found Chandra Shekhar lying there unconscious and Kamal Kishore was seriously wounded but could talk. P.W. 1 asked Kamal Kishore as to who the assailants

were and Kamal Kishore named the six appellants herein. Chandra Shekhar died soon after. Arrangements were made to shift Kamal Kishore to the hospital at Patharia and he was admitted in the hospital at 11.45 a.m. with multiple injuries. He died in the same evening.

3. After getting Kamal Kishore admitted in the hospital, P.W. 1 went to the Police Station and lodged an F.I.R. The investigation was taken up, inquest was held and the dead bodies were sent for post-mortem. The Doctor, who conducted the post-mortem, on the dead body of Chandra Shekhar found three incised wounds on head, one punctured wound on the right fore-arm and multiple contusions on the right hand. The skull was found to be fractured causing his death. Kamal Kishore had three incised wounds on the head and two lacerated wounds on the temporal and occipital region. Besides, he had multiple contusions and his death was due to cerebral injuries. The accused were arrested and after completion of the investigation, the charge-sheet was laid. The prosecution examined 21 witnesses and the accused pleaded not guilty.

4. The prosecution relied on the evidence of the two eye-witnesses P.W. 2 Thanuram and his wife P.W. 3. But they turned hostile. P.W. 1 particularly deposed about the oral dying declaration made by Kamal Kishore to him. Likewise P.W. 5 the wife of Kamal Kishore deposed that she went to the place where Kamal Kishore was lying and on being questioned he told her that the appellants had beaten him and Chandra Shekhar. The trial Court relying on the two dying declarations spoken to by P.Ws. 1 and 5 convicted the appellants. Incidentally it also referred to some of the important admissions made by the two hostile witnesses. In the appeal, the High Court having considered the evidence of P.Ws. 1 and 5 and also the admissions made by P.Ws 2 and 3 in the cross-examination reached the conclusion that the prosecution established the guilt of the appellants and accordingly dismissed the appeal. In the instant appeal the learned counsel urged that P.Ws 1 and 5 are interested witnesses and on the basis of the oral dying declarations said to have been made to them by Kamal Kishore the deceased, the appellants cannot be convicted and that at any rate it is highly unsafe to convict them without strong corroboration which is not there. Learned counsel also submitted that Kamal Kishore with multiple injuries could not have been in a position to make such dying declarations to P.Ws. 1 and 5.

5. It is a simple case not arising out of any faction. Because the cattle belonging to the appellants trespassed into the field of the deceased and damaged the crops, a quarrel arose and that ultimately led to the present occurrence. P.W. 1 who is the father of the deceased and P.W. 5 who is no other than the wife of Kamal Kishore, one of the deceased persons, would be the last persons, in such a situation, to implicate the appellants falsely leaving out the real culprits. Both the courts below have discussed the evidence of P.Ws 1 and 5. We have also perused the same. P.W. 1 in the first information report itself has mentioned about the earlier dying declaration and has also given the necessary details. Nothing significant has been elicited in his cross-examination. Likewise, P.W. 5 deposed that she also reacted the place of occurrence and found Chandra Shekhar lying unconscious and that her husband Kamal Kishore was conscious and on being asked, he told her that the six appellants attacked him and beat him. Thereafter Kamal Kishore was taken to the hospital. In the cross-examination she has affirmed the same and her evidence does not suffer from any infirmities. The Doctor who examined Kamal Kishore, on being cross-examined, no doubt stated that ordinarily injuries found on the head of Kamal Kishore could cause unconsciousness but it could not positively be said that they would have caused immediate unconsciousness. Relying on this admission, the learned counsel submitted that it is not safe to rely on the oral dying declarations. It must be noted that the Doctor did not categorically state that Kamal Kishore would have been unconscious, immediately after receipt of the injuries and could not have been in a position even to speak that much. We have carefully examined the evidence of P.Ws. 1 and 5 and also the reasons given by both

the courts below and we are satisfied that no interference is called for. The appeal is accordingly dismissed. Appeal dismissed.

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