Niranjan Prasad and others

Vs

State of M.P.

Criminal Appeal No. 837 of 1985

(M. K. Mukherjee, G. B. Pattanaik JJ)

14.03.1996

JUDGEMENT

M.K. MUKHERJEE, J.

1.26 persons including the 10 appellants were arraigned before the Sessions Judge, Jabalpore for rioting, two murders and other allied offences. The trial ended in an acquittal of all of them; and aggrieved thereby the respondent-State of Madhya Pradesh filed an application seeking leave to appeal under Section 378, Cr. P.C. The High Court, however, granted leave only against the 10 appellants(the respondents therein). After hearing the parites the High Court allowed the appeal, set aside the acquittal of the 10 appellants and convicted and sentenced each of them for offences punishable under Sections 148, 325/149, 302/149 (one count), I.P.C. Aggrieved thereby the appellants have filed the present appeal under Section 379, Cr. P.C.

2. Briefly stated the prosecution case is : on July 2, 1981 at or about 10 a.m. when Gajadhar (P.W.3) along with his sons Bhagwat and Lakhanlal and wife Kusumbai were cultivating their land, which is at a short distance from their village, the accused persons came there variously armed. While the appellants Niramjan Prasad and Narayan Prasad (since dead) had rifles with them the other appellants were carrying weapons like lathis, spears and pharasas. Seeing the accused persons coming in a riotous mood Gajadhar and his family members tried to flee towards their village but could not succeed as on the way the miscreants caught them up on the road near the house of Khoobchand(P.W.4) and some of them started beating Gajadhar with the weapons in their hands. When his son Lakhanalal came to his rescue the appellant Sitaram assaulted him on his head with a ballam (spear) while some of the other appellants assaulted him with iron rods. Khoobchand then came to their rescue only to be assaulted by some of them. It is the further prosecution case that when they found Santkumar, another son of Gajadhar coming towards the road the appellants Narayan Singh and Niranjan Singh fired at him. Then the miscreants fled away. An information about the incident was given by one Rametibai at the Sihora police station immediately thereafter which was entered in the station diary. After making that entry ASI Dayaram Dube (P.W. 27) went to the place of occurrence and first recorded the statement of Khoobchand which was treated as F.I.R. He then sent the four injured to the Hospital where Santkumar and Lakhanlal succumbed to the injuries in that very night. On completion of investigation P.W. 27 submitted charge-sheet.

3. To prove its case the prosecution relied principally upon the ocular version of the incident as given out by the Gajadhar (P.W.3) Khoobchand (P.W.4), Raj Kumari Bai (P.W.5), wife of Gajadhar and a dying declaration made by Santkumar.

4. On perusal of the judgment of the trial Court we find that the medical evidence that was adduced

by the prosecution to prove the injuries on the person of the deceased Lakhan-lal P.W.s 3 and 4 completely belied the ocular version of the witnesses and that their version regarding the murder of Santkumar was not at all reliable. Besides, the trial Court found that the evidence regarding the dying declaration allegedly made by Santkumar was unsatisfactory.

5. In appeal the High Court concurred with the findings of the trial Court regarding the murder of Santkumar as also the dying declaration. The High Court, however, found that the findings of the trial Court that the medical evidence did not fit in with the evidence of the eye-witnesses was not a proper one. According to the High Court the evidence of the eyewitnesses clearly establised that the 10 appellants herein committed rioting armed with deadly weapons and in prosecution of the common object of the unlawful assembly they committed the murder of Lakhanlal and also caused grievous hurt to P.Ws. 3 and 4.

6. To ascertain whether the above finding of the High Court as against the above 10 appellants is correct or not we have carefully considered the medical evidence as also the evidence of the eye-witnesses in the context of the prosecution case-as delineated through the eye-witnesses- that the deceased as also the injured were assaulted with sharp cutting weapons. Surprisingly, however, the evidence of the doctor who held post-mortem ex-amination shows that the deceased Lakhanalal had no in-jury which could be caused by a sharp cutting weapon; and, indeed, he had sustained only one injury which could be caused, according to the doctor, by a blunt weapon only. Similar is the state of medical evidence so far as the injured are concerned. If on the basis of the objective findings of the doctor the trial Court found it unsafe to rely upon the ocular version of the incident as given by the above four witnesses it cannot be said that the finding of the trial Court in this regard was against the weight of evidence or perverse so as to justify the High Court to set aside the same.

7. We, therefore, allow this appeal, set aside the impugned judgment and acquit the appellants of all the charges levelled against them. Since the appellants are on bail they are discharged from their respective bail bonds. Appeal allowed.