

Rukma

Vs

Jala

(G.N. Ray, G T. Nanavati JJ)

08.08.1997

JUDGMENT

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NANAVATI, J.

1. The widows of the three victims, who were alleged to have been murdered by respondent Nos. 1 to 8 (Accused 1 to 8), have filed this appeal, by special leave of this Court, against the judgment and order of acquittal passed by the High Court of Rajasthan (Jaipur Bench) in B.D. Criminal Appeal No. 444 of 1987. The State has not thought it fit to file an appeal against the decision of the High Court.

2. On account of a dispute regarding land there was enmity between the family of Anna Rawat of Village Masiniya in the District of Ajmer with the family of Accused No. 1. It was the prosecution case that because of the enmity Accused Nos. 1 to 8 assaulted Anna Rawat, his brother Kana, his sons Madhu, Arjun, Mohan and Sua and one Punna and Ratna while they were returning from their fields to the village in the evening of 11.2.1986. They were assaulted while they were passing through the Nalla situated near the field of Ganpat Chita. Vishnu (A-2) and Ratan (A-5) were armed with pharsis, Sardara (A-7) was armed with an axe and others were armed with sticks. Ratan (A-5) first gave a blow with his 'pharsi' on the head of Anna and Vishnu (A-2) gave a blow with 'pharsi' on the waist of Anna. Ratna (A-5) then gave a blow with 'pharsi' on the head of Kana. Sardara (A-7) gave an axe blow on the hand of Kana. Vishnu (A-2) gave a 'pharsi' blow on the head of Madhu. Thereafter all the accused started beating other members of Anna's party. On account of the injuries caused to them Anna and Kana died on the spot. Madu died while he was being taken to the hospital. As a result of the blows given by the accused, Sua (PW-1), Mohan (PW-2), Arjun (PW-7), Punna (PW-8) and Ratna (PW-9) received injuries.

3. In respect of this very incident Vishnu (A-2) lodged an oral report with the police at Kishanganj Police Station at about 9.00 P.M. In pursuance of that report Hardayal Singh, who was incharge of that Police Station, went to Village Masiniya. He recorded the complaint of Sua (PW-1) at about 11.00 P.M. The police first filed a charge sheet against A-1 to A-8 but after making further investigation they filed another charge sheet against six more persons. All the fourteen accused were committed to the court of Sessions. The learned Sessions Judge discharged the accused against whom charge sheet was filed later as he did not find sufficient evidence to proceed against them. The learned Judge proceeded against A-1 to A-8 and convicted them mainly on the basis of the evidence of Sua (PW-1), Mohan (PW-2), Arjun (PW-7), Punna (PW-8) and Ratna (PW-9). All the accused were convicted under Section 302 read with Section 149 IPC for causing the murders of Anna, Kana and Madhu and also under Sections 323 and 324, both read with Section 149 IPC for causing injuries to the said prosecution witnesses. Vishnu (A-2), Ratna (A-5) and Sardara (A-7)

were also convicted under Section 148 IPC and the rest were convicted under Section 147 IPC.

4. All the eight accused challenged their conviction and sentence by filing Criminal Appeal No. 444 of 1987 in the High Court of Rajasthan. The High Court on re-appreciation of the evidence found that :

1. the eye witnesses had tried to suppress the genesis of the incidence;
2. the eye witnesses had falsely implicated before the police 13 more persons, as disclosed by the fact that the police did not think it fit to file any charge sheet against all of them and six accused were discharged by the Sessions Court;
3. all the eye witnesses denied to have made statements on 28.3.1986 and 4.7.1986 with reference to which they were contradicted during their cross-examination;
4. all the eye witnesses have made similar improvements while giving their evidence in the court;
5. the eye witnesses have falsely denied that the accused had received any injury at their hands;
6. the independent eye witnesses Bholu (PW-4), Sayar (PW-5), Bhura (PW-6) and Devi Singh (PW-13) did not support the prosecution but supported the defence version;
7. Balu (PW-3) and Bhoma (PW-10) who are the real brothers of the deceased Anna and who had also claimed to have seen the incidence did not support the prosecution. Moreover, the High Court also found that the trial court had committed a grave error of law in relying upon only some portions of the statements of the accused recorded under Section 313 Cr.P.C. and ignoring their remaining version as regards the circumstances under which the incident had happened and they had caused injuries to the deceased and the members of his party and some of them had received injuries at the hands of the deceased and the injured eye witnesses. The High Court also found on close scrutiny of the evidence that the defence version was more probable than the version given by the eye witnesses. It held that the prosecution has failed to establish that A-1 to A-8 had committed the offences for which they were tried and convicted by the trial court. It, therefore, allowed the appeal, set aside the judgment of the trial court and acquitted them.

5. Mr. Sushil Kumar Jain, learned counsel for the appellants, very strenuously urged that the police had not conducted the investigation fairly and with a view to help the accused false statements in the names of the eye witnesses were recorded on 28.3.1986 and 4.7.1986. He submitted that all the eye witnesses have denied to have made the statements which they are alleged to have made on 28.3.1986 and 4.7.1986. They were recorded by the police officers who were not incharge of the investigation of this case. The eye witnesses were contradicted with reference to those statements and some of the findings recorded by the High Court are based upon the said contradictions and the inference drawn therefrom. He submitted that if they are ignored from consideration than the findings mentioned above at serial numbers 2, 3 and 4 will have to be regarded as unsustainable. He also submitted that the finding that the eye witnesses had tried to suppress the genesis of the incidence is not at all correct as the eye witnesses have clearly deposed about how the incident

started and what was the cause for the same. He further submitted that as large number of persons were involved in the incident it was quite likely that the eye witnesses did not notice what injuries were caused on the persons of the accused. Anna and Kana had fallen down on the ground after receiving serious injuries and therefore it is quite probable that attention of the remaining members of the party was not drawn towards the injuries received by the accused. Moreover, the injuries received by Jala (A-1), Vishnu (A-2), Gopy (A-3) Ratan (A-5), Laxman (A-6) and Sardara (A-7) were only minor and simple in nature. It was, therefore, submitted that the High Court committed an error in rejecting the evidence of the eye witnesses on the ground that they had failed to explain the injuries on the persons of the accused. He lastly submitted that the fact that the two brothers of the deceased and independent eye witnesses did not support the prosecution was not at all a good ground for disbelieving the eye witnesses.

6. The investigation pursuant to the FIR lodged by Sua (PW-1) was done by Hardayal Singh (PW-20). He has deposed about the recording of the statements of the prosecution witnesses between 11.2.1986 and 18.2.1986. In his evidence he has further stated that P.D. Sharma, who was then the Additional Superintendent of Police, had also recorded statements of some witnesses in connection with this case. In his cross examination, he further stated that he did not know how many police officers had conducted investigation in this case. It appears that the statements of the witnesses recorded on 28.3.1986 and 4.7.1986 were not given to the accused but they came to know about them after the trial began. Therefore, while the evidence of Sua (PW-1) was being recorded on 12.1.1987 an application was given on behalf of the accused for summoning the file which contained those statements. It further appears that in view of the said application the Public Prosecutor produced those statements from the file of another sessions case against one Sohan. All the eye witnesses were contradicted with reference to the statements made on 28.3.1986 and 4.7.1986. Whereas some witnesses had denied to have made any statement on those dates others merely denied that they had stated what was recorded therein. No attempt whatsoever was made by the Public Prosecutor to show that those statements were recorded by the police officers, who were not connected with the investigation of this case or that they were not correctly recorded. We also find from the record that an advocate engaged by the complainant's party was assisting the Public Prosecutor while the trial was going on. Therefore, in absence of any material to indicate that the investigation was not fairly conducted the contentions raised on behalf of the appellants that the eye witnesses should have been believed when they stated that they had not made those statements, cannot be accepted. It is significant to note that Mohan (PW-2) admitted in his cross-examination that police had recorded his statements three times. The first statement was recorded at the site of the occurrence, second in Village Masiniya and third at the police station. He also admitted that the statements of Panna, Arjun, Sua and Rukma were also recorded by the police though he did not state specifically that their statements were also recorded thrice. If that part of his evidence is read carefully it discloses that the statements of those witnesses were also recorded thrice. In view of these admissions it is difficult to believe the say of the injured eye witnesses, and also accept the contention of the learned counsel for the appellants, that they had not given statements either on 28.3.1986 or on 4.7.1986. When Arjun (PW-7) was questioned regarding the statement dated 28.3.1986 recorded by the Additional Superintendent of Police he merely stated that he did not remember whether it was recorded or not. For all these reasons the contention raised by Mr. Jain that no importance should be given to those contradictions which have been proved on the basis of the statements recorded on 28.3.1986 and 4.7.1986, cannot be accepted and no fault can be found with the findings recorded by the High Court that the eye witnesses Sua, Mohan, Panna, Arjun and Rukma had tried to implicate some innocent persons also and in order to make their evidence acceptable by court had made consistent improvements while giving their evidence in the court.

7. The fact that as many as six accused had received injuries during the incident cannot be disputed in view of the medical evidence on record. All the injuries received by Jala (A-1) and Vishnu (A-2) were not minor, Vishnu (A-2) had received an incise injury on his hand and Jala (A-1) had received a lacerated wound on his head. They were bleeding injuries. All the injured eye witnesses who were with deceased Anna have denied to have caused any injury to any of the accused. They flatly denied that they had weapons with them at the time of the incident. If under these circumstances the High Court thought it fit not to place any reliance on Sua, Mohan, Panna, Arjun and Rukma, it cannot be said that the High Court was not justified in doing so.

8. We also find that the accused in their statements recorded under Section 313 Cr.P.C. have clearly explained the injuries caused on the three deceased and have further explained how the other members of Anna's party received injuries at their hands. Merely because the accused's party received less injuries and the party of the deceased received more serious injuries, as a result of which three persons died, it cannot be said that they were the aggressors. It is quite likely as stated by them that what they did was in exercise of their right of private defence. This is not a case where a large number of injuries were caused to the deceased or to the injured witnesses. The High Court was, therefore, right in holding that the defence version was more probable than the version given by the prosecution witnesses Sua, Mohan, Punna, Arjun and Rukma.

9. We see no substance in this appeal. Therefore, this appeal is dismissed and bail bonds of the accused are ordered to be cancelled.