

State of U.P.

Vs

Bhagwan

(M.M. Punchhi, V.N. Khare JJ)

08.08.1997

JUDGMENT

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KHARE, J.

1. By the present appeals the appellant, State of U.P., questions the correctness of the judgment dated 27.2.1990 rendered by the High Court of Judicature at Allahabad, acquitting the respondents herein by allowing the appeals preferred by the respondents and setting aside the convictions recorded against them by the Additional Sessions Judge, Mainpuri. Before we take up the arguments of learned counsel for the appellant, it is necessary to set out the prosecution case.

2. In short, the prosecution story is that on 22.2.1985 at about 2.30 p.m., in village Nagla Pati, Police Station Bhongaon, District Mainpuri, the deceased Kalicharan was returning from the Court of SDM, Bhongaon, after attending the proceedings in his case. When Kalicharan reached near the house of Ganga Ram, the accused Malkhan s/o. Bhagwan Singh armed with country made pistol, Sher Singh son of Bhagwan Singh armed with rifle, Bhagwan Singh son of Dhanpat armed with country made pistol, Murari son of Ram Narain (Murari died during sessions trial) armed with gun, Shri Krishan son of Bhola Nath armed with country made pistol (Katta), Indrapal son of Ram Bharose armed with country made pistol, Bhim Sen son of the Lakhan Singh, armed with country made pistol and Netra Pal son of Bhagwan Singh armed with country made pistol, emerged behind the fodder grass and hut of Dampat Lal and on Exhortation of Bhagwan Singh to kill the deceased, Kalicharan, Sher Singh, Malkhan Singh, Shri Krishna and Indrapal fired at Kalicharan with their Kattas and guns with intention of Killing him. After hearing the gun shots and hue and cry Bhopal son of Natho Ram, Ram Chander son of Parsadi. Puttu son of Kalyan Singh and the wife of Kalicharan. Smt. Laungshri came rushing. Tika Ram who was following Kalicharan from the house, came forward with exhortation. In order to save Kalicharan, his wife Smt. Laungshri fell upon the body of Kalicharan. Bhagwan Singh again exhorted the accused persons to kill Smt. Laungshri. On such exhortation, Netra Pal and Murari fired shots from their respective weapons on Smt. Laungshri. Kalicharan and his wife, Smt. Laungshri died at the spot. Thereafter, the accused dragged the dead bodies from the place of occurrence towards the direction of West and after crossing the road, took the bodies to the Bitaura of Deojeet, where they were attempting to burn the dead-bodies by sprinkling kerosene oil thereon. Tika Ram, brother of the deceased, Kalicharan, orally lodged the F.I.R. on 22.2.1985 at about 3.15 p.m. at P.S. Bhongaon, District Mainpuri. On the basis of the report lodged by Tika Ram, a case was registered at General Diary No.28 under Sections 147, 148, 307/149, 302/149 and 201 IPC, against the accused Malkhan, Sher Singh, Bhagwan Singh, Murari, Shri Krishan, Indra Pal, Bheem Sen and Netra Pal. Senior Sub Inspector of Police, Sukhvair Singh, who stated investigation of the incident, on reaching the spot, saw the dead bodies which were still burning. The Investigating Officer with the help of villagers who were

collected at the place, managed to extinguish the fire by pouring water on it and the bodies of Kali Charan and his wife Smt. Laungshri were recovered. Thereafter, the inquest report and plan were prepared and the dead - bodies were sent for post-mortem, by Shri Sukhbir Singh. At this stage, Senior Inspector (Police) Bhogaon undertook the investigation of the case in his hand. Since the age and time of death of the deceased could not be ascertained by Dr. Gulecha, Medical Officer, S.N.M.Hospital, Firozabad, who conducted the post mortem, the case was referred to the State Medico-Legal Expert, for his opinion. Dr. B.K. Saxena, Superintendent Balrampur Hospital, Lucknow, conducted the second post mortem examination of both the bodies on 28.2.1985. According to him, cause of death was due to the injuries caused by fire arm ante mortem, and the time of death was around 2.30 p.m. on 22.2.1985.

3. The Learned Sessions Judge, after recording the testimony of the witnesses, held that the accused persons are guilty under Sections 302/147, 201/149, 307/143 IPC. The accused Bhagwan and Netra Pal were sentenced to death under Section 302 IPC and all other accused were sentenced for life imprisonment. Aggrieved by the judgment of the learned Sessions Judge, Bhagwan and Netra Pal Preferred Criminal Appeal No. 2060/88 while Malkhan and others preferred Criminal Appeal No. 2048/88 before the High Court. The High Court allowed both the appeals by its common judgment dated 27.2.1990, which is under challenge in the present appeals.

4. Learned counsel for the appellant urged that there were minor discrepancies in the statements of prosecution witnesses and as such their testimony could not have been discarded by the High Court. Counsel also urged that the testimony of the eye witnesses could not have been discarded by the High Court merely because all the eye-witnesses were found to be from the same family and had enmity with the accused persons. Since these two arguments are inter-linked, we propose to deal with both the arguments together. Before we proceed to consider the arguments, we would like to observe here that, it is true that testimony of an eye-witness having minor discrepancies has to be given weightage unless discrepancies are such which demolish the basic case of the prosecution. Similarly, the testimony of an eye-witness who is partisan by itself is also not a ground for discarding the evidence as testimony of such partisan Witness necessarily is not false evidence, but such testimony requires thorough and careful scrutiny. In light of such legal position, we proceed to consider the arguments advanced on behalf of the appellant. In order to establish the case, the prosecution has examined Tika Ram (PW.1), Bhopal (PW. 2) and Putta Lal (PW. 3), who are eye Witnesses. From the evidence on record, as well as the statements of these three eye witnesses, it is almost established that the eye-witnesses are partisan witnesses and had enmity also with some of the accused directly. The finding of the High Court that these three witnesses are partisan witnesses and had enmity with the accused persons is consistent with the evidence on record. The testimony of such eye-witnesses cannot be discarded on the ground that they are partisan witnesses, but their testimony has to be judged with mere circumspection. The case of the prosecution as stated in the FIR was that the incident in which Kalicharan and his wife Laungshri was shot dead, occurred, near the house of Gangaram and the accused had emerged at that time out of the but of Dammi Lal from behind the Kharpatwar. In the present case, the Investigating Officer after spot insepction prepared a map of the place of occurrence shown as spot 'A' and 'B'. Spot 'B' is a place where Kalicharan, the deceased was first shot at and spot 'A' is a place where the deceased Kalicharan fell down. The distance between the two spots is 40 paces. Spot B is situate towards the eastern corner of the eastern chabootra of Ganga Ram's house. Spot A is situate at north western corner of Lakhan's house. Tika Ram (PW-1) who is the brother of the deceased Kalicharan, in his corss-examination has stated that Kalicharan was fired at near the house of Lakhan and at that time he was at the gate of Lakhan and Ganga Ram. He further stated that Kalicharan after walking one or two paces fell down whereat Smt. Laungi shri arrived and fell upon the body of the deceased Kalicharan and she

too was shot and then both were murdered. According to his testimony, Kalicharan fell down after running one or two paces after he was fired. The place of occurrence as set out in the FIR becomes doubtful because the distance between the spot A and B is about 40 paces. It is also noticeable that no blood was found at spot B where it is alleged that Kalicharan - the deceased was first fired. Similarly, Bhopal (PW-2) stated that Kalicharan received gun shot in front of Ganga Ram's house and the deceased after walking 2 or 3 paces fell down. Puttu (PW-3) also stated that Kalicharan was fired in front of Ganga Ram's house and after walking 2 or 3 paces he fell down. All these three eye witnesses in their respective testimony stated that Kalicharan was first fired at on the spot 'B' shown in the map, prepared by the Investigating Officer which was towards the east side in front of the house of Ganga Ram. Kalicharan, thus, according to these eye witnesses, thereupon ran towards the place where the accused were present and where he fell down after walking 2/3 paces. The testimony of these eye witnesses are totally different than the story set out in the FIR and the statement of the eye witnesses, as recorded under Section 161 Cr. P.C. For these reasons, commencement of the occurrence at the point 'B' or firing at Kalicharan for the first time becomes doubtful.

5. The further case, as set out in the FIR is that, on the exhortation Sher Singh, Malkhan Singh, Shri Krishna and Inder Pal who were armed with Kattas and guns, fired at Kalicharan when his wife Laungi Shri also fell upon his body to save him. At this stage, Bhagwan Singh again exhorted and then Netra Pal and Murari fired at Smt. Laungshri with katta and gun, whereas Tika Ram (PW-1) in his testimony stated that on the exhortation of Bhagwan Singh, Sher Singh, Malkhan Singh, Shri Krishna and Indra Pal Kalicharan was fired whereupon Smt. Laungshri fell upon Kalicharan's person in order to save him. At that stage Bhagwan Singh again exhorted to kill Smt. Laungshri, as she has become an eye-witness, Murari and Netra Pal and Bhagwan fired at Smt. Laungshri. Curiously enough, Tika Ram (PW-1), in his cross-examination stated that Kalicharan was first fired at by Sri Krishna, Sher Singh, Malkhan Singh, Netra Pal and Bheem Sen together at the gate of Ganga Ram. However, this witness also added the name of Bheem Sen as well amongst the person who alleged to have fired for the first time at Kalicharan, which was not the case of the prosecution. Similarly, Tika Ram mentioned the names of Netra Pal among those who fired for the first time and also Bhagwan Singh with Murari and Netra Pal as co-murderers, which was at variance with the case in F.I.R. Bhopal (PW-2), in his testimony stated that Murari, Bheem Sen and Netra Pal fired at Smt. Laungshri which is not the case in the FIR. According to Puttu Lal (PW-3), he after having heard the noise, arrived at the place of occurrence. According to him, Sher Singh shot at Kalicharan in his presence. On exhortation of Bhagwan Singh to Kill. Smt. Laungshri as she has become an eye-witness, Murari, Netra Pal and Bheem Sen fired at Smt. Laungshri. Tika Ram was the real brother of the deceased Kalicharan and Bhopal (PW-2) was an accused in the case of murder of the son of accused Bhawan Singh and if the cause for murder of Smt. Laungshri was her becoming an eye witness, then in that case Tika Ram (PW.1) and Bhopal (PW.2) who were following Kalicharan ought to have been shot at. Thus reasoning for killing Smt. Laungshri renders the testimony of eye-witnesses as unreliable. Further, Tika Ram (PW.1) stated in the FIR that the accused fired at him when he was 7/8 paces behind Kalicharan the deceased. But, curiously enough, he stated that he did not receive any injury as he hid himself into the trench of kachcha road. The place where he alleged to have hid himself from where he witnessed the occurrence was not exhibited in the map. The fact that Kalicharan had not received any injury coupled with other facts as stated above, makes his presence doubtful as an eye witness at the place of occurrence. Puttu Lal (PW-3) in his testimony stated that when gun shot was fired, he took his own gun and arrived at near Mathia which is 16 paces towards south east from the point 'B' and from there he witnessed the occurrence. This witness stated that he has shown the place of hiding to the Investigation Officer, but such place has not been

exhibited in the map. The FIR further discloses that the accused persons dragged the dead bodies of Kalicharan and Smt. Laungshri from the place of occurrence to bitaura of Deojeet and sprinkled kerosene oil thereon and were going to ignite the fire. This part of the F.I.R. suggests that PWs-1 and 2, after witnessing the sprinkling of kerosene oil on the dead bodies, rushed to the police station. Tika Ram (PW-1), in his statement stated that as soon as the accused persons commenced dragging the dead bodies of the deceased persons, he fled away from there. He could not see sprinkling of kerosene oil and also he did not get the facts ascribed in the FIR. Similarly, PW-2(Bhopal) stated that he remained in hiding till the time the dead bodies were taken to Pitaura and the accused persons were going to ignite the fire having sprinkled kerosene oil on the dead bodies and as soon as the accused persons were about to ignite fire he left for the police station. Here, we find contradiction in the testimony of PW-2 and PW-1, Bhopal and Tika Ram respectively, and such contradiction becomes very relevant when the Investigating Officer did not record the statement of any of the eye witnesses named in the FIR on the first day although he arrived at the place of occurrence at about 3.30 P.M. Non- recording of such a statement on the day of occurrence despite sufficient opportunity to record it, raises doubt, about the authenticity of the contents of the FIR and also the testimony of the eye witnesses. There are many other vital discrepancies in the testimony of the eye witnesses inasmuch as the testimony of the eye witnesses inasmuch as the testimony of the witnesses are at variance with the case set out in the First Information Report and as such, the High Court was justified in discarding the testimony of witnesses. The High Court has correctly appreciated the evidence and at no stretch of imagination it can be said that the findings recorded by the High Court are perverse. For these reasons there is no merit in these appeals. The appeals are accordingly dismissed.