

SUPREME COURT OF INDIA

Bhai Lal

Vs.

State of U.P.

(M Punchhi and M Srinivasan JJ.)

04.11.1997

ORDER

1. The conviction of the appellants under Sections 302/34 IPC and award of sentence of life imprisonment to each one of them was confirmed in appeal before the High Court, it originally having been recorded by the Court of Session. The point arising in this appeal is whether the courts below were right in giving to the investigation a clean chit. The argument is based on the following facts:

On 3-1-1978, at about 8.30 p.m., in a certain area of Kanpur town, the dead body of the deceased, Jamil Ahmed was discovered by someone, information regarding which was given to his brother, Ghaus Mohd., PW 1. Ghaus Mohd. reported the matter to the police about one and half hours thereafter, having been to the spot, taking stock of the situation. The FIR is silent about the assailant as also the witnesses to the crime. The next morning at about 8 a.m., PW 4, Abdul Jabbar, reported himself before the police and gave a statement to the effect that he had seen the two appellants, namely, Bhai Lal and Sajjan initially confront the deceased and his companion, Malu, CW 1 and to have insinuated to him of having brought a "Big Daddy" to support him, whereafter menacingly the appellants stepped forward towards those two who started running and were chased by the appellants. It so happened that Bhai Lal was able to inflict an injury to the deceased on his back while running and when on account of the receipt of injury his steps became slow, he turned around and found Sajjan, the appellant, close to him who gave him an injury on the neck as a result of which he fell down and succumbed to his injuries. In line with that statement, the statements of Rakesh Kumar, PW 5 and Sultan Khan, PW 6 were recorded by the police on 4-1-1978. The

statement of Malu, CW 1, however could be recorded much later on 3-2-1978.

2. Significantly, none of the PWs 4 to 6 was in any manner connected either with the deceased or with the accused, their only qualification being that they were residents of the area and claimed to have seen the occurrence in the manner in which it stands described in the version of PW 4. Malu, CW 1, however stood on a different footing because he had some connection with the deceased. As a follow-up to the first information report and on recording of the statements of PWs 4 to 6 the police swung into action in arresting Bhai Lal, the appellant on 5-1-1978 followed by the arrest of Sajjan, the appellant on 15-1-1978. When the matter was ultimately put to trial, the prosecution relied on the statements of PWs 4 to 6, who gave the ocular account and over and above were details supplied about the manner in which the investigation had taken place. The medical evidence supported the ocular account inasmuch as only two injuries were found on the deceased whose death was opined as due to shock and haemorrhage as a result of those injuries. It was suggested before the courts below, as also here, that the investigation was suspect and the Court was bound to closely scrutinize the case-diary to the advantage of the accused-appellants. Failure to do so, according to learned counsel for the appellants, has led to failure of justice.

3. On considering the question raised in the backdrop of the totality of circumstances, we have come to the view that there is no question of any failure of justice having been occasioned by the courts in relying on the eyewitness accounts of PWs 4 to 6. There are two important factors which have to be borne in mind inasmuch as the version of PW 4 was available to the investigation at 6 a.m. on 4-1-1978 much before Bhai Lal, the accused was arrested. Likewise was available the version of Rakesh Kumar, PW 5 and Sultan Khan, PW 6. Thus, the investigation was on surer ground in wanting to arrest Bhai Lal as also Sajjan and maybe in the case of the former, it was successful on 5-1-1978 and in that of the latter on 15-1-1978. The reason given for the suggested delay in arrest was the absconding of the accused. Be that as it may, no such explanation was necessary insofar as Bhai Lal is concerned. The delay in his arrest could, if at all, be only of hours and not of days. Once the courts below have accepted the statements of the aforementioned three PWs, the evidence of CW 1, Malu, fell into insignificance. As responsible citizens, these PWs had come forward to discharge an obligation and had not shied away from doing so as is the normal tendency in towns where bad elements rule the roost. It is creditworthy on their behalf to have supported the prosecution. The courts below were thus not obligated to search in the police diary for any footprint left behind by the investigator which would tell on the prosecution. We are therefore satisfied that the conviction of the appellants was well based on the evidence of the PWs. No interference is warranted in the facts and circumstances. The appeal therefore fails and is hereby dismissed. The appellants are on bail. They shall now surrender to their bail bonds.