

State of Rajasthan

Vs

Mahaveer

(G. T. Nanavati, V. N. Khare JJ)

18.03.1998

JUDGMENT

NANAVATI J

1. Both these appeals arise out of the judgment and order passed by the High Court of Rajasthan in Criminal Appeal Nos. 398 and 382 of 1983. The High Court acquitted the appellants in those appeals and, therefore, the State has preferred these appeals against their acquittal.

2. According to the prosecution about 12 to 13 persons armed with guns and other weapons had gone to the house of Babu on 22.8.1981 at about 5.30 p.m. and shot dead Ram Bharosa, Shankar and Bhikha. They had burnt the house of Babu and also taken away certain articles belonging to the persons residing therein. Eleven out of them were challaned by the police. As two accused were absconding, the trial proceeded against the remaining nine accused. One of them was found to be a child witness and therefore his trial separated. Out of eight accused who came to be tried for the offences punishable under Sections 148, 302, 302/149 and 436 IPC, the trial court convicted seven. They had preferred two separate appeals one was by five accused and the other by two. The High Court acquitted them all on the grounds that the version given by the four eye-witnesses was improbable, that they had made material improvements while giving evidence in the court and that police statements of some of them were recorded late. The High Court also considered the evidence of each eyewitness separately and held that they could not be regarded as reliable witnesses as their evidence suffered from various infirmities.

3. It was submitted by the learned counsel for the appellant State that the incident had taken place during the day time and in the house of Babu and, therefore, the persons residing in the house must have seen the incident. It was, therefore, not proper for the High Court to discard the evidence of the eye-witnesses who were in fact residing in that house merely because there were some inconsistencies in their and were contradicted on certain points by their police statements. He also submitted that admittedly there was enmity between the accused on the one hand and Babu and his relatives on the other hand and as the witnesses had said, it was for taking revenge that the accused had gone to Babu's house on that day and had killed the male members who could be found there.

4. We have examined the evidence of four eye-witnesses on whose statements the learned counsel has placed reliance. All of them have stated that Ram Bharosa and Shankar who were sitting on the roof of Babu's house had raised a shout that the Chauhan's had fired a shot at Babu and killed him and that they were coming towards the house. They have further stated that because of the shout raised by Ram Bharosa and Shankar Bhikha closed the door of the 'Pore' and then all of them went inside the inner room of Babu's house. Ram Bharosa, Shankar and Samaria had hidden themselves

inside the kothi constructed for storing foodgrains. Gokul had taken shelter in the gap in between the kothi and the southern wall of the inner room. PW 1-Siya Ram had taken shelter behind a cot which was near the eastern wall of that room. According to these witnesses, accused Ramesh, Munshi, Pappu and Rajinder entered the inner room. Ramesh pulled out Shankar from the kothi and shot him dead. Rajinder gunned down Ram Bharosa, who was inside the kothi. Munshi had also fired on shot at Ram Bharosa. Accused had Pappu caught hold of Bikha and taken him outside near the Chakki and in spite of the entreaties made by him and his mother-Chandania, he killed him by firing a shot. PW 1-Siya Ram, PW 2-Samaria and PW 3-Gokul have stated that after the accused had left they came out of the room and they were told by PW 4-Chandania and other female members of the house that accused-Pyara Lal, Krishna, Rajbir and Mahaveer had set the house on fire and that they had also taken away utensils and their jewellery.

5. According to PW 4-Chandania, the above named eight accused has also tried to take away the women but other persons who were standing outside the house in khaki uniform and who had come along with the accused told them not to do so as all the male members of the house were already killed.

6. The High Court found the version of these witnesses improbable. It has given good reasons for taking that view. When the accused had searched the 'Kothi' and shot dead Shankar after taking him out of it and gunned down Ram Bharosa who was inside, it is highly improbable that they did not care to look at the places where PW 3-Gokul and PW 1-Siya Ram were hiding in that small room. That not only creates a doubt regarding their presence in that room but also makes their version improbable. It also indicates that the witnesses were deposing about something which they had really not seen. These witnesses had their own house at some distance. But they have tried to establish their presence in Babu's house by stating that they were staying there together because of fear of the Chauhan's. If that was really so they would not have failed to state it before the police. It is proved they had not stated so in their police statement. It is also doubtful whether Ram Bharosa and Shankar had really raided the Chauhan's had gunned down Babu. Babu had gone to his nearby field and he has not stated that any shot was fired at him by any of these accused. According to him he had heard the sound of firing a gun while he was returning from his field and at that time he was at some distance from his house. For that reason he did not go near his house and tried to watch what was happening from some distance. If the deceased seen Babu they would not have spared him as he was the leader of the opposite group. That creates a serious doubt regarding the circumstances and manner in which the incident happened. While it is true that Ram Bharosa, Shankar and Bikha were killed inside the house of Babu it is doubtful if really they and the witnesses were residing there and that they, incident was therefore, witnessed by the witnesses. No article belonging to them was found from the house of Babu by the police while preparing the site plan.

7. In view of the improbabilities and infirmities seen in the evidence of the eyewitnesses, the view taken by the High Court cannot be said to be unreasonable. We, therefore, dismiss these appeals.

8. Bail bonds of the respondents are ordered to be cancelled.