

Mohar Singh

Vs

State of Rajasthan

(G. T. Nanavati, S. P. Kurdukar JJ)

16.04.1998

JUDGMENT

NANAVATI J

1. Both these appeals are filed against the judgment and order passed by the Rajasthan High Court in DB(CrI) Appeal No.12/89. Criminal Appeal No. 623/91 is filed by the brother of the deceased and Criminal Appeal No. 624/91 is filed by the State.
2. Respondents - Ranveer, Bhadar Ram, Chet Ram, Het Ram, Mohan Singh and Om Prakash were convicted by the trial court for the murder of Duni Ram. The conviction was based mainly upon the evidence of the eye-witness - PW 1 - Mohar Singh, brother of the deceased. The other evidence relied upon by the prosecution was of corroborative nature. The trial court also relied upon the dying declaration stated to have been made by the deceased before his wife - PW 7 - Gomti.
3. The High Court on reappraisal of evidence found that the evidence of PW 1 was not reliable as regards the identity of the accused. The High Court has pointed out that PW 1 immediately on his return to the village, after the incident had happened, had stated to his mother and sister-in-law that Duni Ram was beaten by 'Bhanbhus'. It may be stated that 'Bhanbhu' is a sub-caste of Jats. As PW 1 had not given names of the assailants but described them as 'Bhanbhus', the High Court held that in all probabilities PW 1 had not identified the assailants of Duni Ram. Another reason given by the High Court for doubting the version of PW 1 is that the incident had taken place at about 8.30 p.m. It was a dark night. The reasons given by the High Court appear to be correct. PW 1 has also admitted that he could see the assailants only when they were at a distance of about 10 paces. Admittedly, the assault took place about 30 to 40 paces away from where he was standing and therefore he stated that he could not state whether any of the blows given to Duni Ram had caused an injury. That would indicate that it was quite dark at that time and the witness was not able to recognise the assailants and therefore after reaching the village, he merely described the assailants as 'Bhanbhus'. The High Court has also pointed out that no reliance could be placed on the FIR which contains the names of the assailants because PW 1 in his cross-examination has admitted that the FIR was taken down after the Inspector visited the site and they were then taken to the police station.
4. As regards the dying declaration stated to have been made by the deceased to his wife, it appears that the deceased could not have made such a dying declaration in view of the number of injuries received by him. The evidence of Gomti - PW 7 is that when she reached the place of incident, her husband - Duni Ram was in a position to speak and when she enquired, he gave the names of the assailants. However, she admitted that immediately after saying so, her husband had become

unconscious. No other witness has spoken about this dying declaration. The High Court was therefore right in not placing reliance upon the dying declaration.

5. As there was no other evidence, the High Court was right in acquitting the accused. The order of acquittal passed by the High Court does not call for any interference.

6. The appeals are, therefore, dismissed.