

Kashiram

Vs

State of M. P.

Criminal Appeal No. 57 of 1997

(M.K. Mukherjee, M. Srinivasan JJ)

16.10.1998

JUDGMENT

SRINIVASAN, J. -

1. The appellant and six other persons stood prosecuted for offences under Sections 147, 148, 302 read with Sections 149 and 307/149. They were acquitted by the Additional District Judge, Narisingharh, District Rajgarh (Byara), M.P. State. On appeal, the High Court confirmed the acquittal of five persons but reversed the judgment of the trial Judge with reference to the appellant and another by the name of Ram Singh. The appellant was convicted for offences under Sections 302 and 324 IPC and sentenced to imprisonment for life under Section 302 and imprisonment for four months and a fine of Rs. 1000 under Section 324. We are not concerned with the other accused as he has not come to this Court.

2. The case of the prosecution is shortly as follows : there was prior enmity between the accused persons on the one side and Gorelal and others on the other. The accused persons formed an unlawful assembly and on 29-12-1986 at about 2 p.m. committed the murder of Gorelal in the jungle of Padiliya Khadi. Ram Singh and the appellant shot the deceased with a gun. They caused gunshot injuries to Nanak Ram, Deochand, Beni Singh and Ramesh in the attempt to murder them. Nanak Ram became unconscious. Sewa Ram (PW 1) was working in his field when he saw a bullock-cart coming from the forest side. On hearing sounds of screaming and wailing, he went to the cart and found the dead body of Gorelal. He was informed by Hiralal, s/o Ramratan that the appellant, his brother Bhanwaria, Amritlal, Daryhao Singh, Kailash, Ram Singh and Pappu killed Gorelal in Chhapra and that Ram Singh and the appellant fired guns at Gorelal. He was also informed that the others sustained bullet injuries. Thereafter Sewa Ram went to the police station at Kotra and reported the matter at 5.30 p.m. the same day. The report was recorded. J. S. Tomar (PW 19), SHO registered offences under Sections 147, 148, 302, 307 read with Section 149 vide Crime No. 148 of 1986.

3. After investigation, the accused persons were prosecuted. They denied the charges and pleaded false implication. They also pleaded that the complainant party caused damage to their tractor. After trial, the trial Judge acquitted all the accused. On appeal by the State, the High Court reversed the judgment as regards the appellant and Ram Singh and convicted them while confirming the acquittal of the rest of the accused.

4. The appellant's counsel made the following submissions : the FIR was not lodged on the same day but it was done only on the next day. The appellant has proved alibi and he was not at the place of occurrence. No doctor has been examined to prove the alleged injuries of eyewitnesses. Nor have

they produced any medical certificate. The evidence of the prosecution witnesses is full of discrepancies. The driver of the tractor recovered by the prosecution was not examined by it, and he has been examined by the defence. His evidence corroborated by the damage on the tractor proves conclusively the defence version. The judgment of the High Court is perfunctory and unsustainable.

5. Learned counsel for the State submitted that all the witnesses of the prosecution are consistent in stating that the appellant fired the gun after getting it from Ram Singh. According to him, the appellant has failed to plead or prove alibi and DW 1 was not the driver of the tractor in question. He argued that no suggestion of alibi was put to the prosecution witnesses by the defence counsel. According to him, the judgment of the High Court does not warrant any interference.

6. We heard counsel on both sides at length. We have perused the entire evidence on record. There are five eyewitnesses, namely, PW 2, PW 12, PW 13, PW 14 and PW 15. All of them except PW 2 received gunshot injuries. Their evidence is consistent and excepting minor discrepancies which are natural due to frailty of human memory, nothing has been pointed out for discrediting their evidence. All the five witnesses have categorically spoken to the presence of the appellant on the spot and his firing the gun after taking it from Ram Singh. The argument that no doctor has been examined to prove the injuries of the witnesses is without any substance. Nothing has been elicited in the cross-examination to enable the Court to discard their version of having suffered injuries. On the other hand, suggestions have been made in the cross-examination as if there was a fight between the two groups at the spot.

7. Though learned counsel in the beginning of the arguments attempted to make a point about the lodging of the FIR on the next day, he realised the futility thereof when it was pointed out that PW 1, the Chowkidar of the village rushed to the police station and gave the information to the SO around 5 p.m. According to the witness, the SO before lodging the report, went to the spot to make enquiry and returned much later to lodge the report. The witness cannot be disbelieved on that ground and the High Court has adverted to this aspect of the matter.

8. The main plank of the argument of the appellant's counsel was "alibi". According to him, the evidence of the DWs and the records produced by DW 3 prove that the appellant attended the Court of the Naib Tehsildar on that day situated about 60 to 70 kms away and the appellant could not have been present at the place of occurrence. There are several circumstances which disprove the case of alibi. There was no consistency in the suggestions made to prosecution witnesses when they were cross-examined. A suggestion was made to PW 2 that he himself and the members of his group attacked the appellant and his driver. The suggestion could be only on the basis that the appellant was present at the spot. No suggestion was made to PW 2 that the appellant was not there at the time of the occurrence. There was no suggestion to PW 13 that the appellant was not present there. When the appellant was questioned under Section 313, he did not say that he was not present at the spot. All his answers were mere denials of the evidence put to him.

9. Strong reliance is place on the evidence of DW 1 who claims to be the driver of the tractor which was found on the scene of the occurrence. But the number of the tractor given by him is different from the number of the tractor seized. His entire evidence is wholly unreliable. The High Court has rightly characterised him as a got-up witness and his evidence is rejected.

10. The evidence of DW 4 does not inspire any confidence. He claims to have been present in the Court of the Naib Tehsildar along with the appellant. But Ex. D-7 disproves his statement. In that case, he was a non-applicant and the order discloses that he was not present in court and that he

should be informed of the order. DW 3 who produced the records from the Court of the Naib Tehsildar proves equally unreliable. His version that cases in the Court of the Naib Tehsildar started only at 2 p.m. is too big a pill to be swallowed. He could not state clearly the time at which the statements containing the signature of the appellant were recorded. It is quite obvious that he is a partisan witness and no reliance can be placed on his evidence.

11. In the facts and circumstances of the case, there is no difficulty in rejecting the version of the appellant that he was not present on the scene of the occurrence at the relevant time. The other matters relied on by the learned counsel for the appellant in support of his contention that the evidence of the prosecution witnesses is unacceptable are not of much significance or sufficient importance to negative the reliability of the prosecution witnesses.

12. In the result, we hold that the High Court was justified in reversing the judgment of acquittal passed by the trial court and convicting the appellant under Section 302 as well as Section 324 IPC. The sentences awarded by the High Court are quite appropriate and we do not find any warrant to interfere with the same. The appeal fails and is dismissed.