

State of U.P.

Vs

Kapildeo Singh

Criminal Appeal No. 179 of 1998

(G.T. Nanavati, N. Santosh Hegde JJ)

11.02.1999

JUDGMENT

G.T. Nanavati, J.

1. The State of U.P. has filed this appeal challenging the acquittal of the respondents under Sections 302 r/w 149, 307 r/w 149 and 395 IPC.

2. All the six respondents were tried in the Court of Sessions Judge, Gazipur, in Sessions Trial No. 148 of 1977, for committing murder of Ramdas and attempting to commit murder of Baba Nageshwar Das. It was alleged against them that during the night between April 27 and 28, 1976 at about 2.00 a.m., they along with some co-villagers had gone to the 'kutiya' of Baba Nageshwar Das to settle the dispute regarding the land of Kapildeo. As Baba insisted that the land having been given to the deity it was not possible for him to compromise, a quarrel took place. First Ramdas was assaulted and thereafter the Baba. Ramdas died on the spot.

3. In order to prove its case the prosecution had examined two eye witnesses P.W. 1 Baba Nageshwar Das and P.W. 6 Radhey Shyam. P.W. 6 had not seen the assault but had been the accused running away from that place soon after the offence was committed. The Trial Court did not believe the evidence of P.W. 6 but relying upon the evidence of P.W. 1, convicted the respondents. The High Court after re-appreciating his evidence held that Baba could not have identified the assailants as there was no light and he was an old man of 108 years with weak eye-sight. Taking these facts into consideration and also the delay of three months in recording his statement the High Court disbelieved his evidence and acquitted the respondents.

4. Learned counsel for the appellant-State submitted that the evidence discloses that there was a burning lantern in the 'kutiya' at the time of the incident. A discussion had preceded the assault. Assailants were not unknown. Therefore, the High Court was wrong in holding that Baba could not have identified any of the respondents. He also submitted that the evidence further discloses that eye-sight of Baba was normal till the date of the incident and that it had become weak as a result of injuries received by him on that day. What is submitted by the learned counsel appears to be true. The evidence shows that one lantern was found lying in the 'kutiya' when the investigating officer had visited the 'kutiya' in the morning. We have no reason to doubt this evidence. However, what is more significant is the evidence that there was some oil in the lantern but it was not burning when examined. That would imply that somebody had turned it off. That was not done by Baba (P.W.1) nor any outsider would have done it after the incident. In all probability it was turned off by Ramdas before he and Baba went to the roof for sleeping. What Baba has stated in his examination-in-chief is that at about 2.00 a.m. while they were sleeping on the roof of their 'kutiya' somebody knocked at

the door and shouted for him and, therefore, he asked Ramdas to go down and see who had come. In all 20 to 25 persons had come. Out of them the respondents had entered into the 'kutiya'. They wanted him to enter into a compromise and withdraw the suit. As they replied that the land having been donated to the deity there was no possibility of any compromise and they would not mind what happens in future. At that time the respondents assaulted them. He and Ramdas were given blows with 'barchha' and 'lathies'. The High Court did not accept his evidence as it was found inconsistent with the medical evidence. All the injuries on the person of Ramdas were found to have been caused by sharp-edged weapons. Apart from this inconsistency, we find other inconsistencies also in the evidence of Baba which create a doubt regarding truthfulness of his version. It is also not believable that so late in the night the assailants had gone to his 'kutiya' for persuading him to settle the matter. The evidence of Baba as to when the assailants had come is also inconsistent. In his cross-examination he had stated that they had just finished bhajan when the assailants had come to his 'kutiya'. In that case both of them would have been found lying on the ground floor. The evidence shows that the dead body of Ramdas was found inside the 'kothari' on the ground floor while he was found lying injured on the first floor. It appears that while they were sleeping on the roof of their 'kutiya' they heard some noise coming from the 'kothari' therefore Ramdas had gone there and he was assaulted there. Assailants then went up and assaulted Baba. In view of these infirmities in his evidence the High Court rightly did not place any reliance upon it. There was no other evidence connecting the respondents with the crime. The High Court has, therefore, rightly acquitted them. As we see no justification to interfere with the order of acquittal passed by it, this appeal is dismissed.

5. *Criminal Appeal No. 545/88* : This appeal by the injured Baba is dismissed in view of the judgment in *Criminal Appeal No. 179/88*.

Appeals dismissed.