

SUPREME COURT OF INDIA

State of U.P

Vs.

Hem Raj

Crl.A. No. 190 of 1991

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

14.05.1999

ORDER

NANAVATI, J.

1. The State has filed this appeal against the judgment of the High Court in Criminal Appeal No. 2903 of 1978 whereby it allowed the appeal of the respondents, set aside their conviction and acquitted them.

2. The prosecution case was that on 25.5.1975, sometime between 9 and 10 A.M. an exchange of words took place between Champa (the deceased) and Babu Lal, the brother of the three accused (the respondents herein) in respect of the manner in which his cattle were taken by Babu Lal from near the house of Champa. Babu Lal went home and reported the matter to his brothers. They then went to the house of Champa armed with sticks. They protested why their brother was abused by Champa. All the three then assaulted Champa and gave one blow each as a result of which Champa received injuries on her head and ultimately died. It was also prosecution case that Champa's husband Bachey Lal in order to save Champa had also thrown a stick towards them as a result one of them was injured.

3. In order to prove the assault on the deceased the prosecution had examined Bachey Lal (P.W. 4), Jhajhan Lal (P.W. 5 and Iqbal (P.W. 6). The trial Court believed the evidence of the eye witnesses and held all the three accused guilty of the offence punishable Under Section 302 I.P.C. They were also convicted Under Section 323 and 324 I.P.C.

4. Aggrieved by the conviction the appellants preferred an appeal to the High Court. The High Court found that the evidence of Bachey Lal and Jhajhan Lal was contradictory both as regards the point of time when the incident took place and also regarding the manner in which the incident had happened. It then observed as under :

After pursuing the evidence of whole event this seems in this case that the applicants had no intention to kill Smt. Champa Devi rather the quarrel began because of the animals and then all of a sudden the physical violence started between them as it is obvious from the evidence that the applicants had also received the injury.

Thus we see that as per the test of evidence only three accused out of the four accused who were

named in the F.I.R., have been found to be involved in this physical violence. According to the evidence, the time of event and cause of the event are not reliable. In this circumstances we do not agree with the learned upper session Judge that the prosecution has proved their case against the applicant beyond any doubt. The applicants are entitled to the benefit of doubt.

The High Court accordingly allowed the appeal and acquitted the accused.

5. It was urged by the learned counsel for the State that the High Court has committed an error of law in acquitting the accused mainly on the ground that they had no intention to kill Champa. He also submitted that even if the finding of the High Court that the quarrel between Champa and accused took place all of a sudden is accepted, they ought to have been convicted Under Section 304 (Part I) of the Indian Penal Code. As we find that the High Court has not given good reasons for acquitting the accused we have gone through the evidence carefully and heard learned counsel on the question of trustfulness of the evidence of the three eye witnesses. All the three eye witnesses have stated that the incident had taken place somewhere between 8 and 10 A.M.. It is difficult to appreciate how this evidence can be said to be inconsistent. From their evidence it clearly appears that the incident took place in front of the house of the deceased and not in front of the house of the accused. P.W. Iqbal is an independent witness as there is nothing on record to show that he was interested either in the complainant or had anything against the accused. He was residing in a nearby locality. He has in clear terms deposed that on hearing the noise of quarrel he went near the house of Champa and then he saw the assault by the accused on Champa. The Investigating Officer had prepared a panchanama and map of the scene of offence and they also show that the incident had taken place in front of the house of Champa and not outside the house of the accused. It, therefore, clearly appears that the accused went to the house of Champa armed with weapons as Babu Lal went home and complained to them about the quarrel which he had with Champa. The evidence further discloses that after initial exchange of words with Champa Jodhey Lal gave a stick blow on the head of Champa as a result of which she fell down. Bachey Lal (P.W. 4) has stated that Bhim Sen also gave a lathi blow to her after she had fallen down on the ground. Jhajhan Lal (P.W. 5) merely stated that Jodhey Lal assaulted Champa. He has not stated that Bhim Sen had also given blows to Champa and had injured her. PW Iqbal has also stated generally that the three accused assaulted Champa. Thus the prosecution regarding assault by all the three accused is rather difficult to be believed. So far as the participation of Jodhey Lal is concerned the evidence is very clear that he gave a lathi blow on the head of Champa as a result of which she had fallen down. The medical evidence also shows that Champa had an injury on the top of her head and that injury was sufficient in the ordinary course of nature to cause her death. Therefore, the evidence of the three eye witnesses as regards the involvement of Jodhey Lal ought to have been accepted by the High Court and it should have confirmed his conviction for the offence punishable Under Section 302 I.P.C. The other two respondents deserve to be given benefit of doubt.

6. In the result we allow this appeal partly and set aside the judgment and order passed by the High Court in respect of Jodhey Lal and restore the judgment and order passed against him by the trial Court. Jodhey Lal is ordered to surrender to custody in order to serve out the remaining part of the sentence. The acquittal of respondents Hem Raj and Bhim Sen is confirmed and to that extent the said appeal is dismissed. The bail bonds of respondents Hem Raj and Bhim Sen stand cancelled.