

SUPREME COURT OF INDIA

Ram Swaroop

Versus

State of U.P.

(G.T. Nanavati and S.N. Phukan, JJ.)

Criminal Appeal No. 986 of 1997.

24.01.2000

JUDGMENT

S.N. Phukan, J. - This appeal is by the accused persons against the judgment and order of the High Court of Allahabad by which the High Court after setting aside the order of the acquittal convicted five appellants namely Ram Swarup, Parmeshwar Din, Radhey Shyam, Anant Ram and Satya Dev under Sections 148, 302\149 and 307\149 IPC. They were sentenced to life imprisonment under Sections 302\149 IPC and five years rigorous imprisonment under Sections 307\149 IPC. They were also sentenced to one year rigorous imprisonment for the offence under Section 148 IPC. Sentences were to run concurrently.

2. Briefly stated the prosecution case is that on 06.09.1977 at about 06.30 a.m. Rameshwar had gone to his grove where he was confronted by the accused who were armed with deadly weapons, accused Ram Swarup had a gun, Parmeshwar had Kanta, both Anant Ram and Satya Dev had Sooja and Radhey Shyam had Kanta. It has been alleged by the prosecution that accused had earlier enmity. Rameshwar ran towards the house raising alarm and he was chased by accused. When he reached near his house his father Jagannath and brother Raja Ram came out from the house raising alarm. Two other brothers of Rameshwar and other villagers came to the spot. Ram Swarup fired from his gun at Raja Ram and other accused started assaulting Rameshwar and Jagannath with their respective weapons. Thereafter accused fled away but accused Satya Dev was apprehended at the spot.

3. Accused Ram Swarup, Parmeshwar Din, Satya Dev and Anant Ram are brothers and accused Radhey Shyam is son of accused Anant Ram. Rameshwar (PW-1) is the son of Jagannath (PW7) and deceased Raja Ram was also the son of Jagannath (PW7).

4. We have heard Shri N.P. Midha, learned counsel for the appellants and Shri Pramod Swarup, learned counsel for the respondents.

5. Both the Courts below held that prosecution was able to prove that deceased met with homicidal death and also accepted the prosecution version of the story that there was enmity between the parties regarding lodging of buffalo belonging to accused Anant Ram in the cattle pound by Jagannath and filing of FIR by accused Satya Dev against Raksh Pal son of Jagannath alleging theft. It may be stated that in the Court

accused did not challenge the factum of murder but the place and time of the incident, as according to accused some unknown persons committed murder of deceased Raja Ram during night and also caused injuries to Jagannath and Rameshwar but as the assailants could not be recognised accused were falsely implicated due to previous enmity.

6. From the evidence of Dr. Sudhir Singh (PW-2) who conducted autopsy on the body of Raja Ram on 7.7.1977 at about 11 a.m. we find that there were gun shots injuries on the body of deceased in addition to abrasions and lacerated wounds. By examining Dr. V.K. Agrawal (PW4) prosecution proved that Jagannath and Rameshwar had injuries on their bodies.

7. To prove the case, the prosecution has examined three eye witnesses namely Rameshwar-PW1, Jagannath-PW7 and Roop Ram-PW8. PW1 and PW7 were also injured. PW-1 in his evidence has clearly stated that in the morning around 06.00 a.m. when he went to his garden which is about 100\125 paces east of his house and he was surrounded by accused persons armed with deadly weapons including gun for assaulting him, therefore, he ran away towards the house shouting for help. On raising alarm his brother deceased Raja Ram and his father (PW-7) came out from the house and accused Ram Swarup fired at deceased Raja Ram with his gun who fell down, other accused surrounded him and his father (PW7) and assaulted them with Sooja and Kantas causing injuries. When other persons arrived accused fled away but accused Satya Dev was apprehended. This version of prosecution story is supported by injured PW-7 and other eye witness PW8. We have been taken through the evidence on record and we are satisfied that the High Court rightly placed reliance on the evidence of the above three eye witnesses namely PW-1, PW-7 and PW-8 and convicted the accused.

8. In cross-examination PW-1 and PW-7 deposed that they were assaulted on the North of Chabutra (Platform) but in the site plan (ext. Ka-14) this place has been shown as point 3 which was on East of Chabutra. From the evidence of the Investigating Officer (PW-9) we find that this Chabutra was very small one and would be 2\3 paces in width and about 3-4 paces in length.

9. According to learned counsel for the appellants this discrepancy in the evidence would support the defence version of the story that the occurrence did not take place at the above place. The High Court was of the view that as the assault was going on it would not be possible for the persons indulging in the assault to be stationary at a particular point. The High Court noted that point 3 in the site plan was described in the index at the place where accused Sataya Dev was apprehended and this site plan was not prepared according to scale and moreover, it was a small platform. Relying on oral evidence, the High Court accepted the prosecution story that Raja Ram was shot at towards South-West of the platform and PW1 and PW7 were injured towards North of the said platform. We accept the analysis made by the High Court and hold that prosecution has been able to establish both the above points.

10. It has been urged by the learned counsel for the appellants that PW1 while running from his garden could have been hit by the accused party as accused Ram Swarup was carrying his gun but we find from arrow marks in the site plan that Rameshwar ran towards his house on the Southern side whereas the accused persons ran towards the

house of Rameshwar from the Northern side. So this submission of learned counsel has no force.

11. Drawing our attention to the evidence of two Doctors namely Dr. Sudhir Singh-PW2 and Dr. V.K. Agarwal-PW4, learned counsel for the appellants has urged that occurrence took place on the night as alleged by defence and not in the morning between 6-7 a.m. PW2 conducted the autopsy on the dead body of Raja Ram. In examination chief he has deposed in clear terms "death of Raja Ram was possible on 6.9.1977 at 7-7 & 1\2 a.m.". But in cross-examination he deposed that "it may be possible that Rajaram died in the mid night of 5\6.7.1977". Similarly PW4 who examined injured PW-1 and PW-7 deposed in examination-chief that the injuries on the above two persons could be caused on 6.9.1977 between 6-7 a.m. but in cross examination he deposed that injuries on the persons of both injured could be caused at any time after 1.00 a.m. By no stress of imagination from the above statements of two doctors it can be held that occurrence did not take place between 6-7 a.m. on 6.7.1977. We also agree with the High Court that it is well known that doctor can never be absolutely certain on the point of time so far as duration of injuries are concerned.

12. According to the learned counsel for the appellants as no blood was collected or found on the platform, it is a serious infirmity in the case for the prosecution. This point was also urged before the High Court and the High Court rightly rejected this point on the ground that victims were immediately taken to the police station and people were also moving here and there at the place of occurrence. Therefore, by the time Investigating Officer went to the place, even if blood had fallen on the ground, the officer could not have collected the blood.

13. PW7 deposed that he was behind Raja Ram at a distance about 10-11 steps when Raja Ram was hit by gun shot. On the basis of the statement the learned counsel for the appellants has urged that occurrence did not take place as alleged by the prosecution which was also accepted by trial Court. The High Court rightly analyzed the evidence of three eye-witnesses with reference to site plan and held that the above statement of PW7 was made regarding the placement of these three witnesses vis-a-vis deceased Raja Ram. The above statement of PW-7 was made while he was explaining that PW-1 was near to the accused and this witness was next to Rameshwar and Raja Ram was behind PW-1.

14. According to learned counsel for the appellants, accused Satpal was arrested by the police from his house in the mid night and he was also assaulted. We are unable to accept the above submission in view of the clear evidence of Head Constable-PW6 who not only registered the case on the receipt of FIR but also recorded that accused Satya Dev was brought by PW1 and others. The Sooja which was also brought along with the accused Satya Dev was seized by PW6. This witness also stated that Satya Dev was put in the lock up at the police station.

For the reasons stated above we do not find any merit in the present appeal and accordingly dismissed.

Appeal dismissed.