

# SUPREME COURT OF INDIA

State of U.P.

V.

Dharamraj

CrI.A.No.1473 of 1995

(S. Rajendra Babu and P. Venkatarama Reddi JJ.)

17.02.2003

## JUDGEMENT

### **P. Venkatarama Reddi, J.**

1. Leave granted.

2. These appeals by special leave, one filed by the informant (P.W. 5) and the other by the State of U.P. arise out of the judgment of the High Court of Allahabad in Criminal Appeal No. 1668 of 1980. That appeal was filed by the accused (respondents herein) against the conviction recorded against them under S. 302 read with S. 34, I.P.C. and the life sentence imposed. The High Court acquitted the accused of the offence with which they were charged and allowed the appeal. The High Court observed that the prosecution was not able to prove the case against the accused by cogent, consistent and reliable evidence.

3. The two accused-respondents were charged for murdering one Harnath Singh of the same village on 8-12-1979 at about 11.30 a.m. at the house of Shivanandan (P.W. 1). They were also charged under S. 323 read with S. 34, I.P.C. for causing simple hurt to Shivanandan but they were acquitted of that charge by the Sessions Court itself.

4. According to the prosecution, when the deceased was at the house of Shivanandan (P.W. 1) to enquire about the cultivation of his land, the accused-Dharam Raj came there. He was having the weapon 'Bhala' in his hand. The deceased questioned the accused-Dharam Raj about non-payment of the money which he spent in connection with the murder case in which both of them were involved. When Dharam Raj replied that he had no money and he was not going to pay anything, there was verbal duel between them. At that stage, the other accused, namely, Ram Prakash came there with a 'Barchi' in his hand and joined the altercation which was going on, in support of Dharam Raj. Suddenly, Ram Prakash inflicted an injury on the chest of the deceased with 'barchi,' wielding it like a 'lathi.' Then, he struck the head of the deceased with the sharp portion of 'barchi,' as a result of which the deceased fell down. Thereafter, both the accused went on attacking the deceased with 'bhala' and 'barchi.' The informant Inderjit Singh, who is the son of the deceased, having heard the

shouts from the house of Shivanandan (P.W. 1) rushed there and saw the attack. Shivanandan received an injury on his hand while he was making efforts to save the deceased. On the alarm raised by those who gathered there, the accused fled from the scene. Inderjit Singh went to the police station, Muskara and got a report (KA-3) written by one K. A. Siddiqui and handed it over to the Head Constable (P.W. 7); on the basis of that report, P.W. 7 registered the case. Thereafter, the Sub-Inspector of Police (P.W. 8) after recording the statement of the Head Constable at the police station, went to the place of occurrence. He prepared Panchayatnama (KA-6) and sent the dead body through the Constables to the mortuary for the post-mortem examination. He collected blood stained earth etc. at the place of occurrence and prepared the site plan (KA-11). P.W. 2, who conducted the post-mortem examination found as many as 19 ante-mortem injuries. Injury Nos. 1 to 4 and 6 were incised wounds which were found on the occipital region and on the face and head. The remaining, excepting injury No. 16 which is an abrasion, are punctured wounds on various parts of the body, including vital parts. On internal examination, the doctor found that the brain membranes were congested, the left and right lung were punctured and the heart and its membranes were punctured at four places. He also found perforation of liver and spleen. In the opinion of P.W. 2, the death occurred due to shock and hemorrhage as a result of injuries.

5. The direct witnesses are Shivanandan (P.W. 1), Smt. Jaggi (P.W. 4), the mistress of P.W. 1 and Inderjit Singh (P.W. 5). The High Court noticed that there were different versions regarding the weapons used. In this regard, the eye-witnesses' account does not tally with what was stated in the F.I.R. and the Panchayatnama (KA-6) attested among others by P.Ws. 1 and 5. Whereas, P.W. 5 mentioned in the F.I.R. that the deceased was attacked by 'barchi,' in the Panchayatnama (inquest report) prepared by the I.O. (P.W.8, it was mentioned that the injuries were caused by 'bhala' and 'lathi.' P.W. 8 asserted that the reference in KA-6 to 'bhala' and 'lathi' was on the basis of statements made by the witnesses. The High Court observed that there was evidence on record that 'lathi' was not used and the injuries were not the result of the 'lathi' blows. It may be noted that each one of the eye-witnesses gave a different version of the weapons used. The High Court also observed that there were material contradictions in the statements of eye-witnesses. Apart from that, the High Court adverted to certain circumstances which go to reveal that the F.I.R. was not the outcome of the dictation by P.W. 5 as alleged by him and that the F.I.R. was probably ante-timed.

6. Having given our anxious consideration, we fell that the view taken by the High Court is a reasonably possible view, though not the only view that could be taken. In an appeal against acquittal, we are not inclined to reverse the verdict of the High Court. The appeals are dismissed.

Appeal dismissed.