

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Sampat Ram

CrI.A.No.2082 of 2008

(Pinaki Chandra Ghose and Uday Umesh Lalit JJ.)

10.04.2015

JUDGMENT

UDAY UMESH LALIT, J.

1. This appeal by special leave seeks to challenge the judgment and order dated 11.02.2008 in DB-Criminal Appeal No.338 of 1983 passed by the High Court of Judicature for Rajasthan at Jodhpur acquitting the respondents of the offences punishable under Sections 147, 302 read with Section 149 IPC.

2. The matter arises out of reporting made by PW3 Lalaram at 11.30 pm on 21.05.1982 that at about 8.30 pm while returning from his field he had stayed at piao of Padmaji for having water and smoke. That time he saw Bhagirath, resident of Tausar ploughing his field with a tractor driven by PW4 Ramkaran. He also saw "one child" sitting on the tractor, whose name he did not know. While so sitting at piao he saw that the respondents- accused and one more person armed with lathis and kassies had formed an unlawful assembly and entered into the field of Bhagirath. As per reporting, he was able to identify them all in the light of the tractor and he had seen accused-respondent Manglaram stopping the tractor whereupon Bhagirath came down from the tractor. Accused Sampat Ram then allegedly inflicted a kassi blow on the head of Bhagirath who fell down. Treating him to be dead all the accused ran away. PW3 Lalaram went to the spot, remained there for about an hour and since nobody appeared he left the dead body of Bhagirath there itself.

3. On this reporting a case was initially registered against the respondents and one Bheenvraj. After investigation charge-sheet was filed against the respondents and

Bheenvraj under Sections 147, 148, 149, 302 and 120B IPC. The prosecution examined sixteen witnesses. The informant PW3 Lalaram turned hostile and could not identify the assailants. PW4 Ramkaran, driver of the tractor could identify all the accused and stated that respondent Sampat Ram had dealt kassi blow on the head of Bhagirath while the others with their lathis had given blows to him. He further stated that immediately after the incident he had left the place of occurrence with his tractor to his house. The person who was referred to as "one child" in the initial reporting, according to the prosecution was PW5 Ramratan. As a matter of fact, PW5 Ramratan was aged about 22 years and a stout person. He could identify only one accused i.e. respondent Sampat Ram, who allegedly was carrying a kassi and had given a blow on the head of Bhagirath. PW11 Dr. Shankarlal had conducted post-mortem on the dead body of Bhagirath deposed about the injuries and his opinion was as under:

"a lacerated wound of size 2" x " x deep muscle on the head of deceased, another lacerated wound of size " x " was over head. Apart from these injuries were also found over back and right arm. Upon opening the skull, bone fracture was found over left parietal bone and on the joint of parietal bones. There were other brain injuries also found. The cause of death of deceased was shock arisen due to brain injuries and internal bleeding. Several bones of skull found fractured. These injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature and the same could have been caused by the opposite side of kassi."

The recovery of kassi Article 1 was proved by PW6 Ganpath on the basis of disclosure information Ext.P-19 given by Sampat Ram. However, upon chemical examination no blood was found on it.

4. After considering the material on record the trial court found that the case was established as against the present respondents. It however gave benefit of doubt to Bheenvraj and acquitted him of all the charges. Accused Sampat Ram was convicted under Section 147 IPC and was sentenced to undergo rigorous imprisonment for two years and payment of fine of Rs.100/- , in default whereof to suffer RI for one month and under Section 302 IPC to sentence of life imprisonment and fine of Rs.100/-, in default whereof to suffer RI for one month. The other respondents-accused were convicted under Section 302 IPC with the aid of Section 149 IPC and awarded similar sentence.

5. The respondents appealed against their conviction and sentence by filing DB Criminal Appeal No.338 of 1983 in the High Court. It was submitted that PW3

Lalaram having turned hostile his evidence could not be relied upon and that the very basis for initiation of prosecution was completely shaken. The person who was referred to as "one child" and not named in the FIR was now turning out to be PW5 Ramratan, a stout person which was again extremely doubtful. It was further submitted that soon after the incident PW4 Ramkaran had straightaway gone to his house on the tractor and never reported the matter to anyone and as such his behaviour was beyond normal course of conduct.

6. The High Court observed that the time and occurrence was between 8 to 9 pm, the night was dark, the accused were strangers to the witnesses and no test identification was conducted during the investigation. It was further observed that according to PW4 Ramkaran, the accused persons were not in the front of the tractor or in the light of the tractor. His behaviour in leaving the place of occurrence and not reporting the matter to anyone was found to be against normal human behaviour. As regards PW5 Ramratan who was a total stranger and whose very presence was doubtful, material contradictions were also found in his statement. On the overall analysis of the matter the prosecution witnesses who claimed to be eye- witnesses were found to be unreliable and untrustworthy by the High Court. The High Court, thus, allowed the appeal and acquitted the respondents- accused of all the charges.

7. The aforesaid view of the High Court is challenged by the State in this appeal by special leave. During the pendency of this appeal, two respondents-accused viz. Ramdhan and Sardar Ram have expired and as such the appeal against them stands abated. Appearing in support of the appeal, Mr. S.S. Shamsbery, Additional Advocate General submitted that PW4 Ramkaran being driver of the tractor would be expected to have been visiting the adjoining villages as well and as such identification of the accused by such witness is not unnatural. Evidence on part of PW5 Ramratan and the medical evidence was sought to be relied upon to corroborate the version of PW4 Ramkaran. Mr. V.J. Francis, learned advocate appearing for the respondents submitted that the behaviour of PW4 Ramkaran was extremely unnatural, that in the darkness and specially without the lights of the tractor he could not have identified the assailants, who were from a different village.

8. We have gone through the record and considered the rival submissions. PW3 Lalaram, having turned hostile, the matter completely hinges on the testimony of PW4 Ramkaran. His behaviour in leaving the place of occurrence and not reporting the matter to any one is extremely unnatural. The incident having occurred in the darkness and as accepted by PW4 Ramkaran it was not in front of the tractor, the

chance and opportunity for him to have sufficiently identified the assailants is also doubtful. There is nothing on record as to how "one child" who was on the tractor, has after investigation been found to be none other than PW5 Ramratan, aged about 22 years and a stout person.

9. In the circumstances, the view that has weighed with the High Court in reversing the order of conviction and acquitting the respondents-accused is definitely a possible view. In this appeal against acquittal, we do not see any justification to upset such view taken by the High Court. Consequently, this appeal fails and is dismissed.