

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Surja Ram

Crl.A.No.566 of 2008

(Pinaki Chandra Ghose and Uday Umesh Lalit JJ.)

10.04.2015

JUDGMENT

UDAY UMESH LALIT, J.

1. This appeal by Special Leave challenges the judgment and order dated 22.08.2007 passed by the High Court of Judicature for Rajasthan at Jodhpur in DB Criminal Jail Appeal No. 27 of 2003 acquitting the Respondent herein of the offence punishable under Section 302 read with Section 34 of IPC.

2. Initially six Persons were alleged to have committed offences punishable under Sections 147, 341, 149, 364, 302 , 201 read with Section 120B of IPC. One of them named Chatra Ram was granted pardon and was examined as PW1 in the trial. Out of five accused who faced the trial, Bhanwru Ram and Mohan Ram were acquitted by the Trial Court. It convicted Hapu Ram and Surja Ram for the offences under Sections 341, 364, 302 IPC read with 120B IPC, while the other accused named Raju Ram was convicted under Section 302 read with Section 34 of IPC. In the appeals preferred by convicted accused, the High Court affirmed the conviction and sentence of Hapu Ram under Section 302 of IPC while acquitting him of the other charges. The other two namely Surja Ram and Raju Ram were acquitted of all the charges. In the Special Leave Petition preferred by the State, the Petition as against Raju Ram was dismissed by this court but leave was granted as against accused Surja Ram. This matter is therefore restricted as regards challenge to the acquittal of Surja Ram by the High Court .

3. Complainant PW4 Om Prakash submitted written report at Police Station, Nagaur at 10:15 p.m. on 12.5.1998, that on 10.5.1998 he and his father Jeevan

Ram were returning after attending a marriage around 11:00pm, when the motor cycle tyre got punctured . Father Jeevan Ram told the complainant to proceed with the Motor Cycle while he would return in the tractor of one Mohan Ram. The report further stated that his father had since then not returned. Pursuant to this report FIR No. 206 of 1998 was registered and matter was investigated. One of the suspects Chatra Ram having being granted pardon, charges were framed against Five accused under Sections 147, 341/149, 120B, 364, 302 and 201 IPC and the trial was conducted in the Court of Addl. Dist. & Sessions Judge (Fast Track) Nagaur vide Sessions Case No. 72/2001.

4. PW1 Chatra Ram deposed that on 10.5.1998, his Jeep came to be hired by Raju Ram and Surja Ram for going to Village Budi with Raju Ram, Mohan Ram, Surja Ram, Bhanwru Ram as occupants. On the way Hapu Ram joined them. While passing along they found Jeevan Ram on the road, whereupon the jeep was stopped and Hapu Ram and Surja Ram got down. They brought Jeevan Ram forcibly and made him sit in the jeep. The witness stated that he and Mohan Ram resisted but Hapu Ram said that they be dropped at Nagaur otherwise he would kill all of them. Hapu Ram was having a pistol in his hand. Later Mohan Ram left at which stage Surja Ram and Hapu Ram caught hold of Jeevan Ram and made him sit in the front between them. Hapu Ram with the pistol in his hand had stated that if anybody raised any protest he would kill them. The jeep was then taken towards Bidasar. After going for about 15-20 kms from Village Katar, the jeep was stopped near a well by the side of the road. The jeep was taken close to the well. Hapu Ram and Surja Ram made Jeevan Ram get down, then strangulated him by the cycle tube and threw him in the well. Hapu Ram had threatened them not to say anything to anyone. The witness further stated that before strangulating him, Hapu Ram had asked Jeevan Ram to marry his younger daughter with him. During the trial the prosecution produced one letter marked as Exh. P21 written by Hapu Ram stating that his marriage with the daughter of Jeevan Ram should not be cancelled and had given threats therein. PW 4 Om Prakash, complainant reiterated the contents of his complaint.

5. The Trial Court found that the case was established as against Hapu Ram, Surja Ram and Raju Ram. It convicted Hapu Ram and Surja Ram principally for the offence under Section 302 of IPC and sentenced them to undergo life imprisonment and a fine of Rs. 25,000/- each, in default whereof to undergo simple imprisonment for 3 years. They were also convicted under Sections 341, 364 and 201 of IPC, while accused Raju Ram was convicted under Section 302 read with 34 IPC. The other two accused Bhanwru Ram and Mohan Ram were acquitted of all the charges.

6. The convicted accused carried the matter by filing DB CrI. Jail Appeal No.27 of 2003 and 74 of 2003. The High Court while affirming the conviction of Hapu Ram under Section 302 IPC and under Section 201 IPC acquitted him of other charges. He was sentenced to life imprisonment for offence under Section 302 with fine of Rs.5,000/- and for sentence of 3 years under Section 201 of IPC with a fine of Rs. 1,000/-. The sentences were to run concurrently. The High court however acquitted Surja Ram and Raju Ram of all the charges.

7. While dealing with the eye witness account through PW1 Chatra Ram as regards the role of Surja Ram, the High Court observed as under:-

"...Witness stated that Surja Ram and Hapu Ram strangled deceased Jiwan Ram, but in the cross-examination, said witness stated that deceased Jiwan Ram was strangled by Hapu Ram and before doing so, even Hapu Ram asked deceased Jiwan Ram to marry his younger daughter and, in that event, he would be relieved, but his proposal was not accepted by Jiwan Ram and, at that time, accused Hapu Ram strangled deceased by a cycle tube. Thus, the allegation of strangulation by Surja Ram was not made in the cross examination. Hence conviction of accused Surja Ram under Section 302 of IPC cannot be maintained because of contradiction in the statement...."

With this view the High Court acquitted Surja Ram of all the charges.

8. Mr. Puneet Parihar, learned advocate appearing for State of Rajasthan submitted that the assessment made by the High Court was completely incorrect. Referring to the testimony PW1 Chatra Ram, it was submitted that the role of Hapu Ram and Surja Ram as stated by the witness in his examination in chief was :-

Both Hapu Ram and Surja Ram had got down and brought Jeevan Ram forcibly and made him sit in the vehicle.

Later, both had caught hold of him and made him sit in the front between them.

After bringing the vehicle close to the well, Hapu Ram and Surja Ram made Jeevan Ram get down. They strangled him with cycle tube and threw him in the well.

The relevant portion from the cross-examination of the witness which was relied upon by the High Court was to the following effect :- ".....I had seen

Hapu Ram rounding tube in his neck and drawing him forcibly towards well, nothing else I had seen. I had not seen as to whether the deceased Jeevan Ram was going on his foot or the accused persons were drawing him..."

Ms. Aiswarya Bhati, learned Advocate for the Respondent submitted that the view taken by the High Court in the circumstance, did not call for any interference.

9. The assertion in the cross-examination of PW1 Chatra Ram does not in any way detract from the role clearly attributed by the witness to Surja Ram. The witness did not say that Surja Ram never got down from the vehicle or that he had not accompanied Hapu Ram. The cross-examination also did not challenge such assertion by the witness that both Hapu Ram and Surja Ram had made Jeevan Ram get down from the vehicle near the well. The above quoted portion in the cross-examination very clearly deals with the role of Hapu Ram. This portion does not in any way detract from the role attributed to Surja Ram. The High court was plainly wrong in relying on this portion in the cross-examination to give benefit of doubt to Surja Ram. The testimony of PW 1 Chatra Ram, is consistent and not in any way shaken in cross-examination as regards Surja Ram.

10. In our view, Surja Ram was an equal participant in the crime. His role in bringing Jeevan Ram forcibly and making him sit in the vehicle, thereafter making him sit in the front, and finally in making him get down near the well and strangulating him, was rightly relied upon by the Trial Court. The High Court committed gross error in granting him benefit of doubt. Given the status of record, such view is not a possible view at all. We therefore allow the appeal, set aside the judgment and order of the High Court acquitting Surja Ram. The conviction as ordered by the Trial Court is restored. Surja Ram is convicted under Sections 302 and 201 IPC read with Section 34 IPC and sentenced to life imprisonment and to pay fine of Rs. 5,000/- on the first count and for 3 years and fine of Rs. 1,000/- on the second count. The sentences shall run concurrently. The Respondent Surja Ram be taken in custody forthwith to undergo the sentence awarded to him.