

STATE OF U.P.
v
RAJA RAM AND ORS.

JUNE 20, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Penal Code, 1860—s. 302 r/w s. 34—Assault by six accused—On exhortation by one accused other accused assaulted the victim—Conviction under s. 302 r/w s. 147, 148 and 149—High Court altering conviction of three accused to s. 302 r/w s. 34 and acquitted the other three—Acquittal challenged—Held: Order of High Court justified since prosecution case against the three accused was not free from doubt and that the evidence of prosecution witnesses was not cogent with regard to these accused.

According to the prosecution, on the fateful day respondents surrounded YC in the field, RR and RN were armed with spears and others were armed with lathis. On exhortation of accused RP, RR and RN assaulted YP with spear and others assaulted YP with the arms which subsequently resulted in his death. Victim raised alarm and PW 1, 2 and 3 came to the place of incident and thereafter, accused persons ran away. FIR was lodged. Investigation was carried out. Respondents were convicted under s. 302 read with ss. 149, 148 and 147 IPC. Respondents filed appeal. High Court set aside the conviction and sentence of respondents 4 to 6. However, the conviction of RR, RN and RP was altered to section 302 read with section 34 IPC. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. High Court has noted that prosecution case against D, CL and S is not free from doubt. They were alleged to be armed with lathi. In the FIR there was a clear statement that these respondents also assaulted the deceased with lathi. PW-1 in his examination in chief also stated that all the assailants having lathi were continuously hitting the deceased with lathis. However, PWs 2 and 3, in their deposition made an improvement and developed the case that only RP respondents struck a lathi blow on the head of the deceased, but the acquitted three simply waved their lathis to thwart away the

A witnesses. It appears that since deceased had only one blunt object injury which is specifically attributed to RP alone, the prosecutor did not hesitate to develop the case through the evidence of PWs 2 and 3 that these respondents did not strike any blow of lathi on the deceased but they simply threatened the witnesses by brandishing lathis. No such case was put forward in the FIR or at the investigation stage. Therefore, High Court, extended benefit of doubt to D, CL and S and acquitted them of the offences charged for. [Para 8]

B [1088-E, F, G, H]

C 1.2. The reasoning of the High Court does not suffer from any infirmity. The High Court rightly observed that PWs 2 and 3 tried to introduce different versions from what has been stated during investigation. Their version was altered to be in line with medical evidence. Therefore, the High Court has rightly held that the evidence is not cogent so far as they were concerned.

[Para 9] [1089-A, B]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1362 of 2002.

From the Judgment and Order dated of the 23.2.2001 of the High Court of Judicature at Allahabad in Crl. A. No. 838 of 1985.

E Sahdev Singh and Mohd. Fuzail Khan (for Anuvrat Sharma) for the Appellant.

K. Sarada Devi for the Respondent.

The Judgment of the Court was delivered by

F **DR. ARIJIT PASAYAT, J.** 1. The State of U.P. is in appeal against the judgment of the Division Bench of the Allahabad High Court directing acquittal of the present respondents 4 to 6 while upholding the conviction of respondents 1 to 3 namely, Raja Ram, Ram Nath, and Ram Prasad, with the alteration that they were convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'), instead of Section 302 read with Section 149 IPC. Conviction for offences punishable under Sections 147 and 148 IPC was set aside. The High Court set aside the conviction of Devender, Chhotey Lal and Subhash who are respondents 4 and 6 in this appeal.

G

H 2. Respondents faced trial for alleged commission of offence punishable under Section 302 read with Sections 149, 148 and 147 of the Indian Penal Code, 1860 (in short 'IPC'). The learned Additional Sessions Judge, Ballia

found the accused persons guilty and sentenced each to undergo imprisonment for life and one year respectively in respect of three offences. A

3. Prosecution version in a nutshell is as follows:

On 10.4.1984 Yadunath Chauhan (hereinafter referred to as the 'deceased') was going from his village Bankat to village Jigirsar for some work. When he was near the Government Tube-well and the field of Balchand, all the respondents surrounded him. Time was about 6.30 a.m. Respondents Raja Ram and Ram Nath were having 'Spears' while all other had lathis. On exhortation of accused Ram Prasad, respondents Raja Ram and Ram Nath started assaulting Yadunath with spear and rest with lathi. On the alarm raised by the victim, his son Babban Chauhan (PW-1), Ram Lal, Roop Narain (PW-2), Kamal Nath and others were attracted to the scene of occurrence. Seeing the pressure being mounted with the arrival of witnesses accused persons ran away with their respective weapons. B C

Babba Chauhan (PW-1) son of the deceased, himself wrote down the First Information Report (Ex. Ka 1) and carried the same along with victim Yadunath to P.S. Khejuri where F.I.R. was recorded and the investigation was undertaken. D

After completion of investigation charge sheet was placed. Accused person pleaded false implication. They examined one witness DW-1 and exhibited certain documents to show that the complainant was inimical to them. E

4. On analysis of the evidence on record learned trial court held that the incident occurred at the time and place indicated by prosecution and the same is witnessed by PWs 1, 2 and 3 and their evidence was trustworthy. The First Information Report was lodged with promptness and the stand of defence that deceased was done to death in the early hours of the day while it was still dark was not acceptable. With these findings learned trial court Judge concluded that the prosecution had succeeded in establishing its case beyond reasonable doubt. F G

5. Accused persons preferred appeal before the High Court. Analysing the evidence on record the High Court found that the accusations so far as they relate to respondents 1 and 3 stand substantially established. Their participation in the occurrence was proved beyond doubt. Ram Nath and Raja Ram both assaulted the deceased with spear. In the post-mortem examination H

A two incised penetrating wounds were found, beside five other incised injuries. As regards Ram Prasad, it was noted that all the witnesses stated that he assaulted the deceased on his head with a lathi.

B 6. Coming to the case of the respondents 4 to 6 it was found that the prosecution was not free from doubt. They were alleged to be armed with lathi. In the first information report there was a clear statement that these accused persons assaulted the deceased with lathis, Babban Chauhan (PW-1) had also stated about this. But PWs. 2 and 3 made a departure and stated that only accused Ram Prasad struck a lathi blow on the head of the deceased but others simply waved their lathis to scare the witnesses. The High Court
C found this was to be a development to bring their version in line with the medical evidence. It was noted that since one injury with a blunt weapon was noted, this departure from earlier stand was introduced. Therefore, the conviction and sentence in so far it related to respondents 4 to 6 was set aside. They were acquitted of the offence charged. However, the conviction of Raja Ram, Ram Nath and Ram Prasad was altered to Section 302 read with
D Section 34 IPC.

7. In support of the appeal learned counsel for the appellant-State submitted that prosecution version having been accepted, the High Court should have also convicted respondents 4 to 6.

E 8. We find that the High Court has noted that prosecution case against Devendra, Chotey Lal and Subhash, is not free from doubt. They were alleged to be armed with lathi. In the first information report there was a clear statement that these respondents also assaulted the deceased with lathi. Babban Chauhan (PW-1) in his examination in chief also stated that all the assailants having lathi were continuously hitting the deceased with lathis.
F PWs 2 and 3, however, in their deposition made an improvement and developed the case that only Ram Prasad, respondent struck a lathi blow on the head of the deceased, but the acquitted three simply waved their lathis to thwart away the witnesses. It appears that since deceased had only one blunt object injury which is specifically attributed to Ram Prasad alone, the prosecutor did
G not hesitate to develop the case through the evidence of PWs 2 and 3 that these respondents did not strike any blow of lathi on the deceased but they simply threatened the witnesses by brandishing lathis. No such case was put forward in the first information report or at the investigation stage. High Court, therefore, extended benefit of doubt to Devendra, Chotey Lal and
H Subhash and acquitted them of the offences charged for.

9. The reasoning of the High Court does not suffer from any infirmity. A
As rightly observed by the High Court PWs 2 and 3 tried to introduce
different versions from what has been stated during investigation. Their
version was altered to be in line with medical evidence. Therefore, the High
Court has rightly held that the evidence is not cogent so far as they are
concerned.

10. We find no reason to differ with the conclusion of the High Court. B
The appeal fails and is dismissed.

N.J.

Appeal dismissed.