

RAM KISHAN AND ORS.
v.
STATE OF UTTAR PRADESH

SEPTEMBER 10, 2004

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Penal Code, 1860—Sections 302 r/w 149 and 323 r/w 149—Murder—Appreciation of evidence—Evidence of three eye-witnesses—Deceased was assaulted with 'Lathis' fitted with iron rings—One of them, an injured witness, was accompanying the deceased—Conviction by Sessions Court upheld by High Court—Validity of—Held : mere acquaintance or friendship of PW 1 with deceased not a reason to discard his evidence when his presence at place of incident not doubtful—No reason to doubt evidence of other two witnesses too—All injuries on deceased were on the head and the brain was exposed—Finding of the Doctor that deceased's stomach empty is of no consequence in the absence of evidence to the contrary—Courts below justified in accepting the medical evidence—Courts below having taken a reasonable view of the evidence, no interference called for.

According to the prosecution case, the deceased had gone to witness a 'mela' where he met PW 1. They spent sometime at the 'mela' and during night stayed at the house of father-in-law of deceased which was very close by. Next day, at about 8.00 A.M. they left the house on a motorcycle with PW 1 driving the vehicle and deceased sitting on the pillion. On the way one of the appellants came all of a sudden and intercepted the motorcycle shouting that deceased should not be spared. Other Appellants, who were hiding nearby armed with 'Lathis' fitted with iron rings, came out and assaulted PW1 who fell on the ground. Then they started assaulting deceased with the 'Lathis'. He sustained multiple injuries and died on the spot. Injured PW 1 gave First Information at the nearby Police Station at about 9.45 A.M. Sessions Judge as well as High Court relied on evidence of the three eye-witnesses PW-1, PW-2 & PW-6 and convicted Appellants under Sections 302 r/w 149 IPC and Sections 232 r/w 149 IPC.

In appeal to this Court, it was contended for the Appellants that the three eye-witnesses were all interested witnesses as they were close

A friends of the deceased; that the evidence of PW 2 and PW 6 cannot be
 accepted as they were also not independent witnesses; that the medical
 evidence adduced disproved the prosecution case and that
 PW 1 and deceased had left the house in the morning and must have
 taken food, but the incident must have taken place somewhere during
 B the night and that is why post mortem evidence showed the stomach of
 deceased was empty.

Dismissing the appeal, the Court

C HELD : 1. The Sessions as well as the High Court have taken a
 reasonable view of the evidence and rightly found the Appellants guilty
 under Sections 302 r/s Section 149 and under Sections 232 r/w 149 IPC.
 [292-E]

D 2. Mere acquaintance or friendship of PW 1 with the deceased by
 itself cannot be treated as a reason to discard the evidence of the eye-
 witnesses if it is proved by other satisfactory evidence that the witness
 was very much present at the time of incident. PW 1 was an injured
 witness. Moreover, he gave the first information within hours after the
 incident. Therefore, the presence of PW 1 at the place of incident cannot
 be doubted. [291-A, B; 290-G-H]

E 3. PW 2 and PW 6 are persons residing in the locality, PW 1 also
 deposed that these two witnesses were present at the time of the incident.
 There is no strong reason to discard their evidence. [291-C]

F 4. All three injuries on deceased were on the head and the brain
 was exposed. The doctor was of opinion that there were multiple fractures
 of the skull. There is no evidence as to nature of the weapons except the
 witnesses saying that the 'Lathis' were fitted with iron rings. A heavy
 blow with a weapon such as 'Lathis' fitted with iron rings on the head
 would have caused the skull to break. The weapons were also not
 examined during the course of investigation. What was the width of the
 ring which covered the 'Lathis' is not known. Under the circumstances,
 G the Sessions Court and the High were justified in accepting the medical
 evidence. [291-F, G]

H 5. There is no direct evidence as to whether deceased had taken
 any food in the morning. Appellants pointed to the statement given by
 the Investigating Officer during cross-examination in which he had

admitted that father-in-law of deceased had stated to him that deceased had taken breakfast in the morning and thereafter left the house, but the father-in-law of the deceased was not examined as a witness. Therefore, the statement given by the Investigating Officer must have been based on the statement of the father-in-law of the deceased recorded under Section 161 of the CrPC and is not directly admissible in law. In absence of any evidence to the effect as to whether deceased had taken food or not before leaving the house on the date of the incident, the finding of the doctor to the effect that the stomach of deceased was empty is of no consequence. [292-B, C, D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 229 of 2002.

From the Judgment and Order dated 11.10.2001 of the Allahabad High Court in Crl. A. No. 287 of 1981.

R.K. Jain, P.K. Jain and Ajay Bhalla for the Appellants.

Sahdev Singh for the Respondent.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. : These five appellants were found guilty of murder by the District and Sessions Judge, Varanasi, for having caused the death of one Shiv Shankar Singh. They preferred an appeal before the High Court of Allahabad. The appeal was dismissed and the conviction of the appellants under Section 302 read with Section 149 and under Section 232 read with Section 149 IPC was confirmed. The findings of the High Court are challenged before us.

Deceased Shiv Shankar Singh was a resident of Phoolpur village in the Varanasi district. On 11.10.1979, there was a Bharat Milap 'mela' at Mangari Bazar. Deceased Shiv Shankar Singh had gone to witness the said 'mela'. There, he met PW-1 Moti Chand. Moti Chand and Shiv Shankar Singh spent some time at the venue of the 'mela' and during night they came to the house of the father-in-law of deceased Shiv Shankar Singh, which was very close to Mangari Bazar. On the next day, i.e. 12.10.1979, at about 8.00 A.M., both Moti Chand and Shiv Shankar Singh left the house on a motorcycle. Moti Chand was driving the motorcycle while deceased Shiv Shankar Singh

A pillion-riding the same. When they reached near the pumping house of one Bhaggan Singh @ Vibhuti Narain Singh, the appellants Bansh Narain Singh came all of a sudden and intercepted the motorcycle. Bansh Narain Singh shouted that Shiv Shankar Singh shall not be spared. The other appellants, who were hiding in the nearby 'Arhar' field armed with 'Lathis' fitted with iron rings, came out the assaulted Moti Chand who fell on the ground. Then they started assaulting Shiv Shankar Singh with 'Lathis'. Shiv Shankar Singh sustained various injuries and died on the spot. Hearing the alarm raised by the injured, the other witnesses came there and the appellants fled the place immediately.

C Injured Moti Chand proceeded to the nearby Phoolpur Police Station and gave the F.I. statement at about 9.45 A.M. on 12.10.1979. Moti Chand was sent for medical examination by the S.H.O., who then immediately proceeded to the scene of occurrence. He recorded the statements of Moti Chand and other witnesses, namely, Jagdish, Satya Narain, Rama Shankar Singh and Matter @ Raj Narain and Ram Murat. He held an inquest over the dead body and also prepared a scene 'mahzar' and took custody of the motorcycle. Later, the dead body was sent for post mortem. On 15.10.1979, the Investigating Officer arrested the appellants and filed the final report.

E The learned Sessions Judge as well as the High Court relied on the evidence of PW-1 Moti Chand and PW-2 Rama Shankar Singh and PW-6 Satya Narain Singh and convicted the appellants.

F Learned counsel for the appellants challenged the findings of the Sessions Judge as well as the High Court on various grounds. It was submitted that the three eye witnesses on whom the courts placed reliance were all interested witnesses as they were close friends of deceased Shiv Shankar Singh. The learned counsel pointed out the various facts to indicate that these witnesses were very strong supporters of deceased Shiv Shankar Singh. It was argued that Moti Chand must have been a very close friend of the deceased as both of them had spent a lot of time together at the 'mela' and later the deceased took Moti Chand to his father-in-law's house and both of them stayed in that house for the night. These facts, according to the counsel for the appellants, proved that Moti Chand was not an independent witness. It may be noticed that Moti Chand was an injured witness. According to the prosecution, deceased and Moti Chand travelled on a motorcycle and the same was recovered from the place of the incident by the Investigating Officer, who prepared 'mahzar' immediately after the incident. Moreover,

Moti Chand gave the F.I. statement within hours after the incident. Therefore, the presence of Moti Chand at the place of incident cannot be doubted. Mere acquaintance or friendship of Moti Chand with the deceased by itself cannot be treated as a reason to discard the evidence of the eye witness of it is proved by other satisfactory evidence that the witness was very much present at the time of incident.

The counsel for the appellants strongly urged before us that the evidence of the other two witnesses, namely, PW-2 and PW-6, cannot be accepted as they were also not independent witnesses. It was pointed out that these witnesses were so close to deceased Shiv Shankar Singh that they even filed an affidavit before the court in support of the plea for the cancellation of the bail of these appellants. The incident allegedly happened at 8 o'clock in the morning. These witnesses are persons residing in the locality. PW-1 also deposed that these witnesses were present at the time of the incident. The courts below relied on the evidence of these two witnesses. We do not find any strong reason to discard their evidence.

The counsel for the appellants further contended that the medical evidence adduced in this case disproved the prosecution case. PW-8. Dr. B.B. Subramaniya conducted the post-mortem on the dead body of the deceased Shiv Shankar Singh. He deposed that the injuries found on the body of Shiv Shankar Singh may have been caused by a sharp, heavy cutting weapon. Injury Nos. 3, 4 and 6 are injuries which must have been caused by such a weapon. Injury No. 3 is a chop wound on the left forehead 18 cm. x 4 cm. brain deep; injury No. 4 is a chop wound 10 cm. x 3.5 cm. and injury No. 6 is a chop wound 6.5 cm. and 5 cms. All these three injuries are on the head and the brain was exposed. Counsel for the appellants contended that according to the prosecution, the appellants were armed with 'Lathis' fitted with iron rings and there was no case that any one of the appellants was having any sharp cutting weapon. It is important to note that the 'Lathis' were fitted with iron rings and a heavy blow with such weapon on the head would have caused the skull to break. The doctor was of opinion that there were multiple fractures of the skull. Except the witnesses saying that 'Lathis' were fitted with iron rings, there is no evidence as to the nature of the weapons. During the course of the investigation, these weapons were not examined. What was the width of the ring which covered the 'Lathis' is not known. Under the circumstances, the Sessions Court and the High Court were justified in accepting the medical evidence.

A Another contention urged by the appellants' counsel is that the post-mortem showed that the stomach of the deceased was empty. According to the learned counsel, PW-1 and the deceased had left the house in the morning and they must have taken food and that the prosecution story must be false, for the reason that the incident must have taken place somewhere during the night and that is why the post-mortem evidence is to the effect that the stomach of the deceased was empty. There is no direct evidence as to whether the deceased had taken any food in the morning. The counsel for the appellants pointed to the statement given by the Investigating Officer during the cross-examination in which he had admitted that the father-in-law had stated to him that the deceased had taken breakfast in the morning and thereafter left the house. The father-in-law of the deceased was not examined as a witness. Therefore, the statement given by the Investigating Officer must have been based on the statement of the father-in-law of the deceased recorded under Section 161 of the Code of Criminal Procedure. The statement given by the Investigating Officer regarding this fact is not directly admissible in law. In the absence of any evidence to the effect as to whether the deceased had taken food or not before leaving the house on 12.10.1979, the findings of the doctor to the effect that the stomach of the deceased was empty are of no consequence.

E Counsel for the appellants lastly submitted that in view of the various incongruities in the prosecution's evidence, the appellants should have been acquitted in this case. We are not inclined to accept this argument. The Sessions Court as well as the High Court have taken a reasonable view of the evidence and found the appellants guilty. We are not inclined to interfere with the impugned judgment. The appeal is without any merit and is dismissed accordingly.

F

B.B.B.

Appeal dismissed.