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Court : Allahabad

Decided On : Jan-10-1949

Reported in : AIR1949All594

Appellant : Ram Saran and ors.

Respondent : Rex

Judgement :

Desai, J.

1. This is an appeal by Ram Saran and five others from their convictions and sentences by the Sessions Judge of Meerut under Rs. 302,148 and 323, Penal Code. Ram Saran has been sentenced to death and there is the usual reference for confirmation of the sentence. The other appellants have been sentenced to transportation for life and imprisonment. Ram Saran, Nanwan and Teku appellants are first cousins of one another. Harpal appellant is an uncle of Gajju appellant. The remaining appellant Thana belongs to the family of Ram Saran etc. All the appellants are Gujars living in village Nagla Udairampur and are stated to be members of one party.

2. The prosecution case is as follows: About a month before the occurrence, a canal distributary was cut by some persons in the village. The canal zildar threatened to charge double rates from the inhabitants of the village unless they divulged who had cut the bank. One or two days before the occurrence Ram

Chandar Gujar deceased and Bhajju went to the ziledar and informed him that the bank had been cut by Gajju and Harpal appellants. But the ziledar seems to have taken no action on this information; he did not even visit the village to make an enquiry and did not punish Harpal and Gajju. On the other hand, some cultivators are said to have been charged double rates. On the night of August 8 and 9, 1947, a burglary was committed in the house of Nanwan appellant during his absence from the village and Ram Saran appellant made a report at the police station on 9th August 1947, against Kaley and Gopi accusing them of having committed the burglary. Kaley is the brother of P. W., Khazan and lives jointly with him, while Gopi is the brother of Ram Chandar deceased and Ram Kala and lived jointly with them. The police commenced investigation and Balla, the father of Gajju appellant, Badam, the father of Thana appellant and Rambal, the brother of Harpal appellant stated before the police that Kaley and Gopi were habitual burglars. Thereupon, Kaley and Gopi were taken into custody and detained in the police station for one night. On 12th August 1947, at about 11 A.M. Ram Chandar, Ram Kala and their sister Mt. Sarupi were returning from fields to their home and passed the house of Teku appellant. They were all coming from different fields. Mt. Sarupi had gone to the field of Bhulla to scrape grass with a khurpi and was coming with a load of grass on her head. On the way she met Ram Kala, who was returning with plough and bullocks from his field. Further on they met Ram Chandar who was returning from another field. When they arrived at the house of Teku they found the appellants and one Gangua sitting and talking with one another. When they saw Ram Chandar etc., either Nanwan or Teku threatened to kill them saying they had not only committed the burglary but also were bearing enmity with them and trying to implicate them in cases. At this Ram Chandar and Ram Kala took to their heels and were pursued by Ram Saran etc., who were armed with lathis and spears. Ram Kala on receiving two blows with lathis ran to the south along the lane which goes from north to south in front of Teku's house. Ram Chandar turned from that lane towards the east into the lane going from west to east. His house is to the east. He was attacked by Ram Saran etc. with lathis and spears just between the houses of Lila Jogi and Dalmira Lohar and killed on the spot, Mt. Sarupi who was going behind him fell on him to ward off the blows and received two blows with lathis. Ramphal, Rimal, Rami, Buddhan, Khazan and others saw the occurrence.

After killing Ram Chandar, Ram Saran etc, went away to their houses to the west. Then Ram Kala returned to the spot to find Ram Chandar dead. He went to the police station Pilkhua, which is 9-13 miles away, and at 1-30 P.M. of the same day dictated the first information report against the persons named above and Babu, Surajmal and Ramphal. (This Ramphal is different from P. W., Ramphal). The station officer at once went to the spot, reached there at about 5 P.M. and commenced the investigation. He recorded the statements of all the eye-witnesses, who have been examined in this case, except Rimal, the same day. He examined Rimal on 16th August 1947. He sent Mt. Sarupi and Ram Kala to a Hospital for medical examination. He searched for the persons named in the report but did not find any. They surrendered themselves on 24th August. He did not find any evidence against Babu, Surajmal and Ramphal and got them released. He sent up the remaining seven persons for trial. The learned Sessions Judge convicted six of - them and acquitted Gangua because he did not find the case against him free from doubt.

3. The case against the appellants rests upon the evidence of the eye-witnesses, Mt. Sarupi, Buddhan, Rami, Khazan, Rimal, Ramphal and Ram Kala. They all stated that Ram Chandar was attacked by the appellants with lathis and spears at about 11 A.M. in the east to west lane between the houses of Lila Jogi and Dalmira. All the appellants pleaded not guilty and denied the occurrence altogether. It was suggested from their side that Ram Chandar was wounded or killed before sunrise somewhere outside the abadi and that either his corpse was brought by somebody and placed in the lane or he himself after being wounded went along the lane and fell down in front of Lila's and Dalmira's houses and died there. They pleaded that they have been falsely implicated on account of enmity. Some of them pleaded alibi. They examined some witnesses to prove their plea of alibi and also Chiranji Lal and Deep Chand to prove that Ram Chandar was killed before sunrise at some place outside the abadi and that his corpse was found lying in front of Lila's and Dalmira's houses.

4. The learned Sessions Judge has not relied upon the evidence of Ram Kala, Khazan and Ramphal and we agree that they are not witnesses on whom any reliance could be placed. (After discussing the evidence of these witnesses and

the evidence of those others which was relied on by the learned Sessions Judge, his Lordship continued.)

5. The above discussion of the evidence of the witnesses relied upon by the learned Sessions Judge leaves no room for doubt that none of them also is worthy of being relied upon, According to the statement of Ram Kala and the report, Nanwan and Ram Saran, appellants, and Gangua were armed with spears. Gangua has been given the benefit of doubt and no other witness has stated that Nanwan was armed with a spear. All the eye-witnesses except Ram Kala and Ramphal stated that Thana also was armed with a spear. We do not accept the defence version that Ram Chandar was killed or wounded outside the abadi and that his corpse was placed in front of the house of Dalmira, or he came and fell down dead there, before sunrise, Nobody could have failed to see him coming wounded or his dead body being brought to the house of Dalmira. But it is a different thing to say that he was murdered by the appellants as deposed by the witnesses. We are satisfied that he was murdered at about 11. A.M. at the spot where his corpse was found but the evidence that he was murdered by the appellants before us is not so satisfactory and convincing that we must accept it. We find that some innocent persons have been roped in. We are not certain that even among the appellants there are no innocent persons. The eye witnesses involved all of them equally; either they are all guilty or they are all innocent. But when it is doubtful whether they are all guilty, everyone of them must get the benefit of doubt. The prosecution itself is to blame for this doubt arising in our mind. It is unfortunate that a murder committed in broad day-light in the centre of a village remains unpunished but if first informants will spoil the case by involving innocent persons and if the investigating agency will not make an effort to find out which persons really witnessed the occurrence but will produce even false witnesses in the Court, there is no help and the whole case must end in dismissal.

6. There is no other evidence, barring that of absconding which is capable of explanation without resort to the presumption of guilt.

7. We find that the guilt of none of the appellants has been established beyond reasonable doubt. We accept thin appeal, set aside their convictions and

sentences and direct them to be set free forthwith unless required to remain in custody in some other connection.

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