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Thakur and ors. Vs. State

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Court : Allahabad

Decided On : Sep-30-1954

Reported in : AIR1955All189; 1955CriLJ473

Judge : Kidwai and ;Mulla, JJ.

Acts : Evidence Act, 1872 - Sections 1, 32, 32(1), 45 and 134; Code of Criminal Procedure (CrPC) , 1898 - Sections 174 and 367

Appeal No. : Criminal Appeal No. 246 of 1954

Appellant : Thakur and ors.

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Kalbe Mustafa, Adv.

Disposition : Appeals allowed

Judgement :

1. Appellants Thakur, Bansi Lal, Bhallar, Sangam, Ghulam, Baleshwar and Fakirey have been convicted under Sections 302/149, I. P. C., by the Sessions Judge, Bahraich. Bhallar and Baleshwar have been sentenced to death while the other five appellants have been transported for life. The two appellants Bhallar and Baleshwar are further convicted under Section 148, I. P. C., and sentenced to 3

years' R. I. The other five appellants are further convicted under Section 147 and sentenced to one year's R. I. each. All these sentences were to run concurrently.

2. The seven appellants belong to one family group. Bansi Lal and Thakur are brothers. Fakirey, Ghulam and Baleshwar are the sons of Thakur while Sangam and Bhallar are the sons of Bansi Lal.

3. The prosecution case is that one Kanta Prasad Kurmi was the Pradhan of village Tulshipur, police station Sonwan, district Bahraich. In his capacity as Pradhan of the village he had filed a civil suit in the court of the Munsif Bahraich against Thakur and Bhallar appellants alleging that these two persons were constantly interfering with his possession over two plots and wanted to take forcible possession of that land. He had prayed that a decree for permanent injunction be passed against them and they should be stopped from interfering with his possession. This suit was filed on 28-8-1953 and an affidavit in support of it was tendered on the next day, i.e. 29-8-1953.

Another case under Section 325, I. P. C., against Bhallar, Thakur, Fakirey and Sangam appellants was being investigated at the report of one Kirpa Ram, brother of P. W. 4, Triloki Mukhia, and when the police submitted a charge sheet in this case on 3-10-1953, Kamta Prasad was cited as a prosecution witness. These two cases created a bitter animosity in the heart of these appellants against Kamta Prasad, and so on 11-10-53 at about noon when he and his son Basdeo, who is only a young boy, were returning from their field with loads of 'chari' on their heads, all these seven appellants suddenly emerged from behind the 'arhar' crop of Lalji Khattri and surrounded Kamta in Lalji's field.

Bhallar and Baleshwar appellants were, armed with axes while the other five had lathis. They started beating Kamta who fell down. Basdeo raised an alarm which attracted persons round about who rushed up to the scene of occurrence and reprimanded the assailants. The assailants then went away in three different directions. When Basdeo and the witnesses approached Kamta Prasad, they found that he was seriously injured but still alive. On enquiry from some of these witnesses it is alleged that Kamta gave the. names of the seven appellants as his assailants. One Ganga Ram then brought a cot and they carried Kamta to his

house. Kamta survived for about an hour and a half only. It is alleged that Kamta Prasad named the seven appellants at his house also before he died.

After Kamta's death Basdeo went to the police station Sonwan which is at a distance of three miles only with Triloki Mukhia. He lodged the first information report which was recorded at 5 p.m. The Investigating Officer came the same day to the scene of occurrence and found only Bhallar and Baleshwar at their houses. The other persons named in the First Information Report were absconding. After completing the investigation he submitted a charge sheet against all the seven appellants.

4. The appellants have denied their participation in this crime. Some of them have even denied their presence in the village on the date of the incident but no evidence has been produced in support of their being anywhere else. They have further stated that they were implicated in this case because there was enmity between them and Triloki Mukhia who had gone with Basdeo to the police station.

5. Before dealing with the evidence in this case we would like to consider some general aspects of the case. Firstly, the point for consideration is whether all the seven persons, who are named, participated in this assault or whether only a few of them could have taken part in this crime. In deciding this question we have first to deal with the medical evidence in the case. The post mortem report shows that the deceased Kamta Prasad received seven injuries out of which one was a contusion, one was an abrasion and five were lacerated wounds. The prosecution evidence clearly states that the deceased was attacked by all the seven appellants, and even after he had fallen down, he was beaten with axes by the two appellants, Baleshwar and Bhallar.

In our opinion the injuries on the person of the deceased are clearly in conflict with this version of the case. It is inconceivable that seven persons would be assaulting an unarmed person and will continue beating him even after he had fallen down and will succeed in inflicting only seven injuries on his person. It is also difficult to believe that axes would be used by two young men and they will cause the trivial injuries that were found by the doctor. The only two injuries which are a little serious, are a lacerated wound on the right arm and a lacerated wound on the

head.

If the medical evidence is believed, it is clear that seven persons could not have participated inthis crime. Where there is a conflict between the medical evidence and the oral testimony of witnesses, the evidence can be assessed only in two ways. A Court can either believe the prosecution witnesses unreservedly and explain away the conflict by holding that the witnesses have merely exaggerated the incident or rely upon the medical evidence and approach the oral testimony with caution testing it in the light of the medical evidence. The first method can be applied only in those cases where the oral evidence is above reproach and creates confidence and there is no appreciable reason for the false implication of any accused. Where the evidence is not of that character and the medical evidence is not open to any doubt or suspicion, the only safe and judicial method of assessing evidence is the second method.

The medical evidence in this case is not open to doubt or suspicion and the oral evidence cannot be called irreproachable. There is also some room for suspecting that some of the appellants might have been implicated. The second point, which we would like to consider before dealing with evidence, is whether on the evidence it can be held that an axe was used. The post mortem report does not contain any opinion of the doctor who conducted it as to what was the type of weapon which was used in causing the injuries noted by him. When the doctor comes in evidence, he states that lacerated wounds can be caused both by a blunt weapon as well as by a sharp-edged weapon.

In our opinion the post mortem examination is la very important piece of evidence in criminal trials, and the medical officers, who are entrusted with this work, should do it with utmost care and attention and should not perform it as a mere formal duty. They should, as a rule, fill in all the relevant heads mentioned in the printed form, and apart from giving the approximate time of death they should invariably mention the kind of weapon which was probably used in causing the different injuries. In the absence of any such note being made in the post mortem report and the evidence of the doctor being indefinite on this point we are left to come to a conclusion on this question on the severity of the injuries alone.

No doubt the prosecution witnesses are unanimous in their statements that an axe was used but looking to the trivial nature of the injuries it is not possible for us to accept that an axe had been used, it would have caused much more serious injuries. The chief injury which is a big lacerated wound on the right arm consists of some contusions also and therefore it is probable that a lathi was used by the assailants and that no axe was used. As we have observed above if the prosecution evidence had been of an irreproachable character, we could have accepted that an axe was used but as we cannot place much reliance upon the statements of prosecution witnesses, we cannot hold that an axe was used in this case.

6. The evidence against the appellants consists of the oral testimony of five witnesses, P. W. 1 Basdeo, P. W. 3 Dilasa, P. W. 4 Triloki,P. W. 5 Narain and P. W. 6 Sukhai. In addition to this evidence some witnesses have also been examined to prove that the deceased gave out the names of the assailants when people collected round him at the spot and again at his house. The learned trial Court has rejected the evidence of that group of witnesses which prove the dying declaration of the deceased at his house. He has, however, accepted the testimony of those witnesses who prove the dying declaration of the deceased at the spot.

In our opinion before the testimony of a verbal dying declaration can be accepted, it should at least be consistent. There should not be serious discrepancies relating to the evidence of a dying declaration. Amongst the witnesses who have been examined everyone gives a different version of this dying declaration. It is not clear from the record as to who questioned Kamta Prasad and at what stage he gave out these names. It is also not clear whether he gave out two names or five names or seven names. P. W. 8 Mahesh states that the villagers who had collected over there gave out only two names. Under the circumstances no reliance can be placed on this type of a verbal dying declaration.

7. That leaves us with the evidence of the eye witnesses alone. Out of the eye witnesses the testimony of one witness, namely Sukhai was rejected and rightly rejected by the trial Court, The other four witnesses, namely Basdeo, Dilasa,

Triloki and Narain really belong to one group. Kirpa, the brother of Triloki, was beaten by some of these appellants and there is evidence that a report under Section 325, I. P. C., was being investigated by the police at that time. There is thus evidence of enmity between Triloki and the appellants. Dilasa is a cousin of Triloki while Kamta Prasad deceased was also a cousin of Triloki. Under these circumstances the evidence of these three witnesses Basdeo, Dilasa and Triloki cannot be called independent evidence.

It is not necessary that independent evidencemust be examined but where there is evidencethat a large number of independent witnessescould have deposed about the incident, theirabsence from the list of witnesses and the presence of only partisan witnesses does create adoubt whether the version, which is being givenby them, is to be believed. The fourth witnessNarain, although he does not belong to this familygroup, is also an interested witness and is associated with the group of Triloki. There is evidence that in that pending 325 I. P. C. casehe was cited as a witness for the prosecution.against the appellants. We, therefore, find thatthe witnesses in this case are not reliable, andit is difficult to accept their statements againstthe appellants when it is obvious that quite anumber of appellants have been falsely implicated.

We do not find anything to guide us to distinguish the cases of those persons who might have committed this crime and those who have been implicated 6n account of enmity. All the witnesses name all the seven appellants and narrate a story of Kamta Prasad being beaten with axes even after he had fallen down. Wehave already observed above that this story cannot be accepted by us in the light of the medical evidence on which we rely.

8. It was contended by the Government Advocate that the case against Baleshwar and Bhallar stood on a different footing as there was consistent evidence against them. The only evidence in addition to the evidence which is against all the appellants is the statements of Narain and Mahesh. Although Narain states that these two appellants Bhallar and Baleshwar continued beating the deceased with axes after he had fallen down but as we cannot accept this story, we cannot rely upon his statement. Similarly Mahesh only names Baleshwar and Bhallar as the

persons whose names were being given out by the villagers as the assailants of Kamta deceased.

The statement of Mahesh does not show that Kamta deceased himself gave out any names, and under these circumstances much weight cannot be attached to the evidence of Mahesh. We, therefore, find that the cases of the appellants really cannot be distinguished. It may be that some of these appellants committed this crime but the tendency to implicate a large number of innocent persons is responsible for our not being able to punish the offenders. There is nothing on the record to help us in putting our fingers on the real assailants, and as we are convinced that many of them are falsely implicated, we have to give the benefit of doubt to all the appellants.

9. We, therefore, allow the appeals of all theappellants, set aside their convictions and sentences and direct that they shall be released forthwith unless they are wanted in connection with some other offence. The reference made by the Sessions Judge is rejected.

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