

Peare and ors. Vs. the State

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Court : Allahabad

Decided On : Aug-20-1956

Reported in : 1957CriLJ263

Judge : Chowdhry, J.

Appellant : Peare and ors.

Respondent : The State

Judgement :

Chowdhry, J.

1. This is an appeal by Pyarey (28), Sudama (25), Kandhai (26), Mindai Lal (21), Gendan Lal (35), Hori Lal (30) and Sibba (18), who have been convicted by the learned Additional Sessions Judge of Shahjahanpur under Section 307, I.P.C., and sentenced to 4 years' R.I. each. They have also been convicted of rioting, but as Sibba is said to have been armed with a lathi he has been sentenced to 1 year's R.I. under Section 147, I.P.C., while the others, who are alleged to have been armed with Kantas and Ballams, have been sentenced to 2 years' R.I. each under Section 148, I.P.C. The sentences have been directed to run concurrently.

2. The first five appellants belong to the village of : occurrence, Saidpur, while Hori Lal belongs to Nagaria and Sibba to Bhauna, all within police station Katra. Five others, four belonging to Nagaria and one to Bhauna, who were tried along with

the appellants were acquitted.

3. The learned Sessions Judge has made no mention of Section 149, I.P.C. in his finding but the conviction under Section 307, I.P.C., appears to be with the help of that section since it was mentioned in the charge, and has also been held by the learned Judge, that the appellants organised a raid with the common object of committing the murder of Ram Lal.

4. The prosecution case was that a murderous assault was made on Ram Lal, P.W. 7, in his house at about 11 O'clock in the night between the 22nd and 23rd of June, 1932, by a band of 15 persons armed with Kantas, ballams and lathis. Ram Lal's brother, Cliunni Lal, P.W. 1, and wife Tijni, P.W. 8, were also injured because they tried to save him. They raised an alarm which brought a number of villagers to the scene, including another brother, Jagannath, P.W. 10, and a cousin, Roshanlal, P.W. 11, both of whom lived in different houses, and one Angney, P.W. 9. In trying to intervene, Angney also was injured. On the arrival of the villagers, the assailants made good their escape but were observed with the light of a lantern that was burning inside the house.

5. It is said that there was a long-standing enmity between the assailants on the one hand and Ram Lal and the members of his family on the other, and Sudama, appellant, was the leader of the assailants. The immediate cause of the attack was a pending revenue litigation in which one Raddhu and the letter's brother, Angney, P.W. 9, and undo Chetram had sued Sudama, appellant, and his father Naud Lal. Ram Lal and Cliunni Lal are said to have been doing pairvi, and their brother Jagannath to have appeared as a witness, for the plaintiffs of that suit.

6. The first information report was lodged at 3-30 the same night by Chunni Lal at P. S. Katra, 2 miles away, in which the details of the alleged enmity and of the occurrence were given and the five appellants of Saidpur and Hori Lal, appellant, of Nagaria, were mentioned. About the others it was averred that they were not known but had been seen in the light of the lantern.

7. The officer in charge of the police station, S. I. Rameshwar Prasad, P.W. 24, was present when the report was lodged. All the four injured persons had come to

the police station and they were promptly sent to the dispensary at Katra where their injuries were examined from 6 A.M. by Dr. P. C. Mathur. Rum Lal had one incised wound on the scalp, four punctured wounds (two of which were on the chest) and two bruises, one of the punctured wounds being grievous. Chunni Lal received a punctured wound which was grievous. Angney received 3 incised wounds and a bruise. Smt. Tijni sustained two bruises and a lacerated wound cutting the upper part of the left ear including the lobe, the lacerated wound being grievous. The injuries were found to have been caused by sharp, pointed and blunt weapons.

8. There were test identifications in respect of the two appellants, Hori Lal and Sibba, who did not belong to the village, and each was correctly identified by three eye-witnesses without a mistake.

9. All the appellants denied the prosecution allegations and ascribed their implication to enmity. The five appellants belonging to Saidpur admitted that there was an incident in the house of Ram Lal on the night in question, but it was suggested on their behalf that it was a dacoity committed by persons who were not recognised. One Makhan Lal of Saklpur was produced as a defence witness to support this counter-version.

10. The learned Sessions Judge discarded the defence theory of dacoity and, relying upon the testimony of the eye-witnesses produced by the prosecution, convicted the appellants. Of the seven accused not belonging to Saidpur, five were acquitted by him because, though duly identified in test identifications, the case against them was in his view doubtful inasmuch as they were probably known to witnesses,

11. The doubt entertained by the learned Sessions Judge in respect of the five acquitted outsiders should on a parity of reasoning have been extended to the two outsider appellants as well, viz., to Hori Lal and Sibba. He conceded that Hori Lal had no direct enmity with Ram Lal and his brothers but went on to hold that, as a cousin of his was married to a brother of Sudama, appellant, it was probable that he had joined the raiders. That way of looking at it was however tantamount to giving the prosecution the benefit of doubt. Furthermore, Hori Lal's lest

identification was a mere farce since he was already named in the first information report.

12. As regards Sibba, the witnesses who identified him had also identified those who were acquitted, including Narain who resided in the same village as Sibba. The likelihood of previous acquaintance was therefore equally applicable in his case and he was also entitled to the benefit of doubt. Hori and Sibba in consequence deserve acquittal. But the conviction of the remaining five appellants appears to be well-founded.

13. The gravamen of the arguments of the learned Counsel for the appellants was that the eye-witness evidence produced by the prosecution was not worthy of credence because, firstly, almost all of them were inter-related and, secondly, other witnesses, though admittedly present, had not been produced. In support of the first ground, he relied upon *Dalip Singh v. State of Punjab* : [1954]1SCR145 , and in support of the second on *Habeeb Mohammad v. State of Hyderabad* : [1954]1SCR475 .

14. Now, appreciation of oral evidence, depending as it does on such a variable and inconstant factor as human nature, cannot be reduced to set formulae. Each case must be judged on the totality of circumstances peculiar to it. So judged, there may be reasons inspiring confidence in witnesses despite their apparent partiality to the party producing them and hostility to the party opposite, and despite non-production of others who may also have been present. On the other hand, there may be circumstances compelling disbelief in a certain version though deposed to by all the available witnesses, and witnesses whom it may not be possible for the party against which they appear to stigmatize on the ground of not being independent.

15. One such set rule which, appears to have held the field until dislodged by their Lordships of the Privy Council in *Stephen Seneviratne v. The King* AIR 1936 PC 289 (C), was that it was obligatory on the prosecution to call every available witness even though their names were on the list of defence witnesses. It was laid down by their Lordships that not all available witnesses, but only all material witnesses, should be produced, but that they did not desire to lay down any rules

to fetter discretion on a matter such as this which is so dependent on the particular circumstances of each case. This rule was approved as the true rule applicable in this country by their Lordships of the Supreme Court in : [1954]1SCR475 .

In that case, the question of alleged culpability of a Subedar for ordering policemen to fire on a crowd was considered in the light of the circumstances that a solitary Jamadar was produced by the prosecution to testify although a responsible officer, one Biabani, who was admittedly present at the time of the occurrence, and on whom the burden of ordering the firing had been thrown in the official papers accompanying the first information report, was not produced despite the fact that he was available and the accused had in the course of the trial drawn attention of the Court to the official papers incriminating Biabani. In these circumstances, it was held by their Lordships that the accused was considerably . prejudiced because Biabani was a material witness whom it was the bounden duty of the prosecution to produce, and whose non-production was ascribable to the oblique motive of the prosecution trying to shield him.

16. The same principle of judging evidence as a whole was laid down in : [1954]1SCR145 , IB considering the probative value of relation witnesses. The view that the testimony of a witness in a murder case is to be discarded simply because he was related to the deceased was deprecated and it was laid down that

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A witness is normally to be considered independent witness unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely.' and that foundation must be laid for such a criticism on facts special to the particular instance.

17. Keeping the above principle in view, the dual criticism levelled against the prosecution by the learned Counsel for the appellants may be examined. That an incident did happen in the house of the victims on the night in question in which Rani Lal, P.W. 7, and two other inmates of the house, his brother, Chunni Lal, P.W. 1, and wife, Tijni, P.W. 8, and a neighbour, Angney, P.W. 9, were assaulted with sharp-edged, pointed and blunt weapons is proved by medical evidence and

is in fact admitted. The question only is whether that was the handiwork of the appellants belonging to Saidpur or of some unknown and unrecognised dacoits, Now, it is most important to note that the report in this case was lodged with great promptitude.

The occurrence took place at about 11 p.m. and the report was lodged at the police station two miles away at 3-30 a.m. by one of the injured ones, Chunni Lal, who was accompanied by the other two injured. There was therefore no time for concoction or embellishment. If it were a case of dacoity, the victims would not have thrown away all chances of recovery of looted property by suppressing the fact of dacoity in the report. Without throwing away that chance, the report could yet have been of a dacoity by known (the persons named in the report) and unknown but. recognisable persons. The promptitude in the lodging of the report and the non-mention of dacoity therein therefore lend credence to the prosecution version and negative the defence version of the incident.

18. Tigni and other witnesses have said that her ear was injured by reason of one of the assailants having pulled her earring. It was argued that this showed that it was a case of dacoity. But she has stated that she shouted and fell over her husband who was being assaulted. There was therefore nothing strange in the assailant having pulled at her earring either in anger or in attempting to remove her from the target of his attack. It may also be mentioned that all the witnesses have stated that there was a lantern burning in the house. The pro-sence of the lantern has also been admitted by the defence witness.

19. Another circumstance supporting the prosecution is the existence of motive. Not only were the various motives, including the revenue litigation referred to above, deposed to by Chunni Lal, P.W. 1, and elicited in cross-examination from Angney, P.W. 9, but they were admitted by the appellants Pyarey, Sudama, Mindai Lal and Gendan Lal. The remaining appellant Kandhai has admitted that he is a friend of Pyarey, appellant; he had therefore good reason to join Pyarey in the assault. A point sought to be made out by the learned Counsel for the appellants in this connection was that the admissions appearing in the statements of the appellants under Section 342, Cr. P.C., could not be availed of because they were

not elicited by way of explanations of incriminating circumstances appearing in the prosecution evidence against them. This contention has no force since, as adverted to already, the various motives had already been deposed to by Chunni Lal, P. W. 1 and Angney, P.W. 9.

20. In these circumstances, even though five of the six eye-witnesses produced by the prosecution were inter-related and the sixth, Angney, was a brother of Raddhu who had litigation with Sudama, appellant, their testimony was worthy of credence. It was not a case of dacoity but of an organised attack by way of reprisal. The taint of enmity levelled against the witnesses was in fact the cause of the attack. The relation witnesses, having been able to see the assailants in the light of the lantern, were not likely to screen the real culprits and implicate the five appellants in question falsely. The first ground of attack against the prosecution therefore fails.

21. As regards the non-production of other witnesses, reference was made by the learned Counsel for the appellants to the statement of Chunni Lal in cross-examination where he has admitted the presence of 8 witnesses besides those produced, and it was argued that their non-production raised the presumption that they would not have supported the prosecution. It is noteworthy however that at least five of them were tendered by the prosecution for cross-examination by the defence. True, the prosecution did not produce them on the allegation that they had turned hostile, and there was no finding of the Court on that allegation, but the fact remains that the prosecution showed their bona fides by tendering as many as five of the witnesses named in the first information report.

It was open to the defence to cross-examine those witnesses and show that the allegation that they were hostile to the prosecution was baseless. It was further open to the defence to elicit facts in their cross-examination tending to discredit the prosecution version. In these circumstances, it can-not be said that the prosecution had been influenced by some oblique motive in not producing the said witnesses. It follows therefore that the other ground levelled against the prosecution also fails.

22. The other findings of the learned Sessions Judge as regards the nature of the offences committed, and the commission of those offences in prosecution of the common object of an unlawful assembly have not been challenged and appear to be well-founded. Nor was it urged that the sentences imposed erred on the side of severity.

23. In the result, therefore, the appeal is allowed so far as the appellants Hod Lal and Sibba are concerned; their convictions and sentences are set aside and they are acquitted. They are on bail and need not surrender; their bail bonds are discharged. The appeal is dismissed so far as the appellants, Pyarey, Sudama, Kandhai, Mindai Lal and Gendan Lal are concerned; their convictions and sentences are maintained. They shall surrender to their bail and serve out the sentences imposed on them; their bail bonds are cancelled.

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