

Lalaram Surajmal Vs. the State

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Court : Madhya Pradesh

Decided On : Dec-04-1952

Reported in : 1953CriLJ1764

Judge : Dixit and ;Chaturvedi, JJ.

Appellant : Lalaram Surajmal

Respondent : The State

Advocate for Pet/Ap. : Mr. Dey

Judgement :

Dixit, J.

1. The appellant Lalaram and his brother Karansingh were tried by the Sessions Judge of Morena for an offence under Section 302 read with Section 34, Penal Code for the murder of one Jalim. At the end of the trial, the learned Sessions Judge acquitted Karansingh giving him the benefit of doubt. But agreeing with the opinion of the assessors, he found the appellant Lalaram guilty under Section 302, Penal Code and sentenced him to transportation for life. Lalaram has now appealed to this Court against the conviction and the sentence,

2. The prosecution case was that the appellant Lalaram was a servant of Sukhpal Singh, the zamindar of Kodaira, Madhopur and other villages and that in that

capacity Lalaram used to take forced labour from the villagers and also recover from them illegal exactions. As a result of these acts of Lalaram, the villagers were displeased with him and persuaded him to give up the service of the zamindar. The prosecution alleged that the conduct of Sukhpal Singh the Zamindar and of his servant Lalaram was stoutly opposed by the deceased Jalim who constituted himself as a leader of the villagers and who was a close-relation of the appellant. When the appellant Lalaram refused to leave the service of the zamindar, the villagers did not permit Lalaram to share with them the benefit of a patta in respect of certain lands in the zamindari of Sukhpal Singh which the villagers had obtained from the Collectorate. The prosecution alleged that on account of these reasons the relations between Lalaram and Jalim became strained and that on the evening of 8.5.51 at about 8 p.m. when Jalim was returning from the village-well with some water, the appellant Lalaram and his brother Karansingh assaulted Jalim with a sword and a farasha and inflicted on him severe injuries. It was said that Lalaram had a sword with him and Karansingh carried a farasha. The prosecution stated that Mst. Ram Devi a daughter of Jalim was with him at the time of the alleged occurrence and that when she shouted the. prosecution witnesses Man Singh son of Hargyansingh P.W. 1, Sardar Singh P.W. 2, Har Prasad P.W. 6 came to the scene and witnessed the occurrence and that thereafter the accused persons ran away from the scene. The first information report was lodged by Jalim himself the same night at 2-30 in the morning in the police Station Jaora. In this report Jalim stated that there was some litigation between him and the accused persons and that earlier in the night at about 8 p.m. when he had gone to the village-well to fetch water, the accused gave him sword-blows and caused him severe injuries; that he was picked up by his cousin Mansingh and his nephew Sardar Singh and that the occurrence was witnessed by all the men and women-folk of the village. In the body of the first information report the accused, persons have not been named. But in the column above it⁵ the names of Lalaram and Karan Singh were entered as the accused persons. Jalim was then removed to the hospital for treatment. He, however, died on the afternoon on 9.5.51. A post mortem examination of the body of Jalim was held by Dr. Londhe, the medical Officer of Joura. The doctor found multiple wounds and fractures on the body of Jalim and came to the conclusion that his death was due to these injuries. A few hours

before the death of Jalim, his dying declaration was recorded at about 4-30 a. m. in the morning of 9.5.51 by Mr. Apte, the Sub-Divisional Magistrate of Jaura. In this statement Jalim said that on the previous evening, when he was bringing water and was near a chabutra Karan Singh and one Lalai met him on the way, and then Lalai struck him with a sword and Karan Singh also gave him a lathi blow; and that at that time, no one was present but later on Man Singh and Sardar Singh came to the scene. Jalim also added in the statement that his ring was removed.

3. The appellant Lalaram was arrested on 24.5.51. He denied having given any sword blows to Jalim. He pleaded alibi:

4. At the trial, the evidence against Lalaram and his brother Karan Singh consisted of (1) the depositions of Man Singh P.W. 1, Sardar Singh P.W. 2, Har Prasad P.W. 5 and Mst. Ram Devi P.W. 6 who claimed to have seen the appellant and Karan Singh give blows to Jalim with a sword and a farasha (2) the dying declaration Ex. P. 2 of Jalim recorded by Mr. Apte and the report of the incident lodged with the police by Jalim himself.

5. The deposition of Mst. Ram Devi is that she had gone with her father to the well to bring some water and when they were returning, Lalaram and his brother Karan Singh met them on the way; Lalaram who carried a sword stood on one side of Jalim and Karan Singh who had a farasha with him was on the other side of Jalim and both of them dealt several blows to Jalim and that when she shouted, Man Singh, Har Prasad and Sardar Singh who were in their homes closely arrived on the scene. The witnesses Man Singh, Har Prasad and Sardar Singh said in their evidence that on hearing the cries of Jalim and Mst. Ram Devi, they ran to the scene of the occurrence and found that Lalaram and Karansingh were striking Jalim with a sword and a farasha respectively. None of these witnesses deposed to the precise part of Jalim's body where the blows were struck by each of the accused persons. All that they say is that Lalaram gave three blows and Karan Singh likewise gave two or three blows. All these witnesses were confronted with the statements they had made to the police in which they had omitted to mention the facts that Karan Singh was also present; that he carried a farasha with him and that he also assaulted Jalim. The explanation they gave before the learned

Sessions Judge, as regards these omissions was one of simple denial that what the police recorded was not what they had told to the police. The learned Sessions Judge disbelieved the statements of these witnesses against Karan Singh. He, however, came to the conclusion that there was no reason to reject the statements of these witnesses showing the complicity of the appellant Lala Bam in the crime. The learned Sessions Judge, therefore, relying on the evidence of Man Singh, Sardar Singh, Har Prasad and Ram Devi and on the dying declaration Ex. P. 2 of the deceased found the appellant guilty of the murder of Jalim.

6. Mr. Dey learned Counsel for the appellant contended that the learned Sessions Judge having found that the statements of the alleged eye-witnesses as regards Karan Singh were not true, was not justified in regarding them as trustworthy witnesses against the appellant Lalaram; that according to Ex. P. 2 the dying declaration of Jalim, these witnesses were not present at the time of the alleged occurrence. As regards the dying declaration itself, it was said that inasmuch as the learned Sessions Judge had found the statements therein as regards Karan Singh as not true it should be rejected in toto and that in any case there was nothing to indicate that the person Lalai named in the dying declaration as the person who gave sword blows was no other than the appellant Lalaram. Learned Counsel for the appellant also argued on the basis of - *Har Chando v. Rex* : AIR1950 All355 that as the prosecution put forward a definite story that the appellant Lalaram and his brother Karan Singh both assaulted Jalim with a sword and a farasha, on the acquittal of Karan Singh the prosecution cannot urge for a conviction of the appellant Lalaram for the murder of Jalim on a supposition that all the injuries received by Jalim were inflicted by him i.e. by Lalaram and that as the prosecution evidence does not disclose at all which of the injuries received by Jalim were inflicted by Lalaram, he cannot be convicted even for causing hurt to Jalim.

7. On a consideration of the evidence on record and the contentions of the learned Counsel for the appellant and of the learned Govt. Advocate for the State, I am inclined to think that the contentions advanced on behalf of the appellant are well founded and must be accepted.

8. Dealing first, with the testimony of the alleged eye-witnesses Man Singh, Har Prasad, Sardar Singh and Mst. Ram Debi, it is clear from the judgment of the learned Sessions Judge that he has found their statements implicating Karan Singh as definitely false on the ground that the witnesses had omitted to say anything about Karan Singh in their statements before the police and had not given any satisfactory explanation of the omission. At one place the learned Sessions Judge observes that the evidence of these witnesses is altogether suspicious. Later on he has said that the statement of Sardar Singh and Har Prasad that Karan Singh attacked Jalim with a farasha is clearly false and added as an afterthought. The learned Sessions Judge says 'Karan Singh ne Jalim ko farase se marane ka waka sarasar galat bataur after thought badhya hua hai.' In regard to Mst. Ram Debi and Har Prasad, the learned Sessions Judge has also said that these witnesses are 'tutored' witnesses. From these remarks of the learned Sessions Judge, it is plain that he was in no doubt as to the fact that all these witnesses had made false statements as regards Karan Singh. It is no doubt true that while acquitting Karan Singh the learned Sessions Judge has said that Karan Singh should be given the benefit of doubt. But I fail to understand how when the learned Sessions Judge rejected the evidence of eye-witnesses against Karan Singh as demonstrably false and acquitted Karan Singh on the ground that there was no evidence against him, the acquittal of Karan Singh could be described as one resting on the principle of giving benefit of doubt to the accused. To my mind, the principle of giving benefit of doubt to the accused person operates only in those cases where there is prima facie satisfactory and extremely evenly balanced evidence on either side and the conduct of the accused is consistent with his guilt as well as innocence. Where the evidence led against the accused persons is rejected as utterly untrustworthy, there is no question of giving the accused persons any benefit of doubt. In such circumstances, the accused is acquitted but because there is any doubt about his guilt, but because there is no evidence even prima facie to indicate his guilt.

The learned Sessions Judge was, therefore, not accurate when he described the case of Karan Singh as one of giving benefit of doubt to the accused.

9. In accepting the evidence of the eyewitnesses against the appellant Lalaram, the learned Sessions Judge has been guided by the consideration that the maxim 'falsus in uno falsus in omnibus' is not applicable and that the evidence of a witness who has made an untrue statement in some respect can be accepted as regards rest of what he states and that there is no valid ground for discarding the statement of the eye-witnesses that Lalaram gave sword blows to Jalim. In my opinion, the learned Sessions Judge was not right in accepting the evidence of Man Singh, Harprasad Sardar Singh and Mst. Ram Devi as the basis of the appellant's conviction. It is true that the maxim quoted above is not applicable to India where codified rules of evidence exist and it is open to a Court to accept a part of the evidence of a witness while rejecting the rest of it. But the principle on which the Court so acts is not that though a witness has deliberately made some false statement, he may yet be considered to be a truthful witness as regards some other statements. The Court, however, acts on the principle that certain statements of such a witness being corroborated by the probabilities of the case and other reliable evidence appear to be true and should, therefore, be accepted. A Court may again consider a part of the evidence of a witness to be not free from doubt and may think it unsafe to rely on it. But the rejection of such a statement of a witness does not necessarily destroy the value of his other statements. Where, however, a witness is shown to have made deliberately false statements, there can be no doubt that he is prima facie utterly unreliable and there can be no guarantee of the truth of any statements made by such a witness. The circumstances, in which a Court accepts one part of the evidence of a witness while rejecting the other have been indicated in a decision of the Allahabad High Court in - Ashiq Ali v. Emperor AIR 1936 All 747 (B). It has been pointed out in that case that evidence which is merely unconvincing or doubtful does not stand on the same footing as regards perjured evidence and that here the Court considers one part of the evidence of a witness to be not free from doubt, it may well refuse to act upon it without destroying the value of the rest of it, as in doing so all that the Court implies is that it is not safe to accept it.

10. In the present case the learned Sessions Judge has found the evidence of Man Singh, Har Prasad, Sardar Singh and Mst. Ram Debi implicating Karan Singh as tutored and false. These witnesses have not deposed to the details of the

blows, inflicted by the accused persons. They have only stated in a general way that Lalaram gave two or three blows and Karan Singh gave two or three, blows. Again, according to the dying declaration Ex. P. 2 it would appear that these witnesses did not actually see the assault, but came on the scene afterwards. In Ex. P. 2 Jalim stated that when he was assaulted, nobody was present and that Man Singh and Sardar Singh came afterwards. It is also remarkable that Jalim makes no mention in Ex. P. 2 of the presence of Ram Debi who deposed that she had accompanied Jalim to the well and also returned with him. I find it difficult to believe that if Mst. Ram Debi had really accompanied her father to the well and was with him at the time of the assault, Jalim would have omitted to state specifically that she was present at the time of the assault. The prosecution also admit that there was considerable illfeeling between the villagers and the appellant Lalaram. Having regard to all these circumstances, there can be no guarantee of the truth of the statements of these witnesses implicating even the appellant, Lalaram. For all we know the witnesses might have falsely implicated the appellant Lalaram, like his brother Karan Singh. In my view, it would be very unsafe to found the conviction of the appellant Lala Ram on the evidence of such witnesses.

11. Coming now to the evidence of the dying declaration of Jalim, it must first be stated that in this case there are two dying declarations of Jalim. The first information report which Jalim himself made in the case is admissible as substantive evidence under Section 32(1) of the Evidence Act as Jalim died before the matter came before the Court. See - *Azimaddy v. Emperor* AIR 1927 Cal 17 (C); - *Emperor v. Mohammad Sheik* AIR 1943 Cal 74 (D); - *Kapur Singh v. Emperor* AIR 1930 Lah 450 (E). The other dying declaration is Ex. P. 2 which was recorded on the morning of 9.5.51. There are serious discrepancies between the first information report and the dying declaration Ex. P. 2. In the first information report, it was mentioned by Jalim that both the accused persons attacked him with swords and that the incident was witnessed by all the villagers. Before the Magistrate, Jalim said that one person named Lalai gave him sword blows and Karan Singh hit him with a Lathi and that at that time no body was present. The learned Sessions Judge has not accepted the dying declaration in so far as it implicates Karan Singh. Now, it is no doubt true that if a portion of a dying declaration is untrue, the rest of it cannot necessarily be rejected. As pointed out in

- Naimuddin Biswas v. Emperor AIR 1936 Cal 793 (F) as also in - Provincial Govt. C.P. and Berar v. Jagan Bhat Sitaram AIR 1946 Nag 301 (G) dying declaration cannot be discarded as a whole merely because some portions of it are untrue and it is always a question of fact as to whether a dying declaration should be relied upon or not, and if a part of such statement is shown to have been concocted deliberately, the Court would decline to believe the rest of it without corroboration. I am of opinion that the dying declaration of Jalim ought not to be acted upon for finding the appellant Lalaram guilty of the murder of Jalim, when there is no corroborative evidence and when there are signs of attempt to improve and develop the prosecution evidence at successive stages. In fact the statement of Jalim in Ex. P. 2 that one 'Lalai' struck him with a sword is hardly of any value against the appellant Lalaram. This statement does not necessarily indicate that this Lalai was no other than the appellant Lalaram. The learned Magistrate who recorded the dying declaration Ex. P. 2 did not ask Jalim as to who this 'Lalai' was. The Magistrate should have questioned Jalim so as to elicit from him a clear and unambiguous statement as to the identity of his assailant. As it is the dying declaration Ex. P. 2 does not directly indicate the appellant. It cannot be regarded as one referring to the appellant Lalaram as there is no evidence to show that the appellant is known by the name of Lalai also and as the learned Sessions Judge has not questioned the appellant about his aliases. The report made by Jalim to the police in which he accused the appellant of striking him with a sword has also very little evidential value in the present case. From the deposition of Kamta Prasad P.W. 4 the Head Constable who took down the report, it is clear that the report is not the 'ipsissima verba' of Jalim but only a substance of the answers which Jalim gave to the various questions put to him by the Head Constable. Kamta Prasad said that some fifteen persons brought Jalim on a cot to the police station and that when he questioned Jalim for taking down the report, some of his answers were not intelligible to him. There is thus considerable room for doubting whether the report made by Jalim him by the persons who brought him to the does not after all include matters suggested to police station, answers hinted by leading questions put to him by the Head Constable and inferences drawn by the Head Constable. These circumstances cannot be ignored in determining the value to be attached to the report of Jalim to the Police. In order to enable the Court to

understand what the person making the declaration meant, it is essential that the declaration should be taken down in the exact words of the person making it. Where as in the present case it is impossible to discover how much of the report made to the police by the deceased was suggested by the persons who accompanied the deceased to the police station and by the questions put by the Constable taking down the report and how much was the production of the deceased himself, no weight can be attached to the dying declaration contained in the report. For all these reasons I do not feel that in this case the first information report by the deceased Jalim or his subsequent dying declaration Ex. P. 2 can be taken as one on which full and implicit reliance can safely be placed.

12. In the view I take of the evidence on record, it becomes unnecessary to consider the contention of Mr. Dey that on the acquittal of Karan Singh, the' appellant Lalaram cannot be found guilty of the offence of murder and even of causing any hurt. The argument is based on the decision of the Allahabad High Court in AIR 1950 All 355 (A). The point raised by the learned Counsel is no doubt very important. But the difficulty I feel in the consideration of the question in the present case is that the learned Sessions Judge while acquitting Karan Singh has not given any finding as to whether the assault on Jalim was the act of more than one person in furtherance of common intention or whether it was the appellant Lalaram alone who inflicted all the injuries found on the body of the deceased. Before proceeding to find the appellant guilty under Section 302, Penal Code the learned Sessions Judge should have given clear findings as to whether the appellant Lalaram was constructively or individually liable for the murder of Jalim. The learned Sessions Judge did not take the trouble of summoning before him Dr. Londhe who conducted the post mortem examination and ascertaining from him whether the injuries found on the body of Jalim were all sword injuries, and if not, which of the injuries were sword injuries and whether the sword injuries were fatal in themselves. The evidence as it is, does not, in my opinion, establish either the common intention required by Section 34, Penal Code or the injury or injuries actually inflicted by the appellant. In these circumstances, I do not think it would be proper for me to consider the correctness or the applicability to the present case of the decision of the Allahabad High Court cited by the learned Counsel for the appellant.

13. In my opinion, the prosecution evidence is untrustworthy and it would not be safe to hold the appellant guilty of the offence of the murder of Jalim on such evidence. I would, therefore, accept this appeal and acquit the appellant Lalaram of the charge of murder.

Chaturvedi, J.

14. I agree.

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