

PETITIONER:
BABU RAM

Vs.

RESPONDENT:
STATE (DELHI ADMINISTRATION) AND OTHERS

DATE OF JUDGMENT: 08/01/1998

BENCH:
G.T. NANAVALI, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

These two appeals arise out of the common judgment of the High Court of Delhi in Criminal Appeal Nos. 116/84 and 131/84. Criminal Appeal No. 116/84 was filed by convicted accused La's Ram and Om Prakash. Criminal Appeal No. 131/84 was filed by accused Thakur Singh. The three accused were tried and convicted for the offence of murder, by the Court of Additional Sessions Judge in Sessions Case No. 52/82.

The prosecution case was that a few days prior to the date of the incident, wherein Padam Singh lost his life, a quarrel had taken place between Padam Singh and the accused. But the father and brother of Padam Singh intervened and pacified them. On 19.2.1982 at about 4.15 p.m. when Padam Singh was passing through Gali No.4, the three accused caught him and told him that he was saved earlier by his father and brother but they would not leave him on that day. Om Prakash held Padam Singh from behind and the other two accused, namely, Thakur Singh and Lala Ram inflicted injuries on the front and back of Padam Singh with daggers. Babu Ram, father of Padam Singh, who was following Padam Singh, saw this incident and raised cries for saving his son and catching the accused. Hearing his cries many people, including Prabhu Dayal, Pyare Lal, Sua Lal and others, came there. Babu Ram himself was able to catch hold of accused Lala Ram. Prabhu Dayal ran after Om Prakash and caught him. Thakur Singh was caught while running away by Pyare Lal and Sua Lal. Meanwhile the police party headed by sub-inspector Dharam Pal, which was on patrolling duty, reached that spot and came to know about the incident. The three accused who were caught by that time were handed over to the police. On these allegations all the three accused were tried for committing the offence punishable under Section 302 read with Section 34 IPC and under Section 27 of the Arms Act.

The prosecution examined Babu Ram (PW-3), Pyare Lal (PW-4), Prabhu Dayal (PW-6) and Sua Lal (PW-7) as eye witnesses. It also lead other supporting and corroborative evidence. The trial court rejected the contention of the accused that there was delay in recording the FIR and that the delay was because till the next day morning names of the

assailants were not known. It believed the evidence of the eye witnesses and held all the three accused guilty.

The High Court, mainly relying upon the substance of information noted in Ex. DW 2/A based upon D.D entry No. 16A, recorded in Rojnamcha, maintained at the Patel Nagar Police Station, which did not contain names of the accused, names of the eye witnesses, the place of occurrence and the weapons used and also the circumstance that copy of the FIR had reached the Ilaka Magistrate at 10.00 a.m. on 20.2.1982, held that in all probability the FIR was not recorded till next day morning. The High Court also held that the circumstance, that the dead body was not removed from the spit till 1.10 a.m. and that the formal arrest of the accused was shown at about 1.30 a.m., also created a doubt regarding the genuineness of the version given in the FIR. The High Court rejected the evidence of eye witnesses on the ground that injury No.8, could not have been caused if the deceased was held by accused Om Prakash in the manner stated by them. Another reason given by the High Court for discarding their evidence is that they were appearing as witnesses and supporting each other in numerous criminal cases. Taking this view the High Court set aside the conviction and acquitted the accused.

Aggrieved by the acquittal of the accused Babu Ram, father of the deceased and a prosecution witness, has filed these appeals after obtaining special leave. What is contended by the learned counsel for the appellant is that the reasons given by the High Court for holding that there was delay in recording the FIR are not at all sustainable. He also submitted that the two main reasons given by the High Court for discarding the evidence of the eye witnesses are also not sustainable as the evidence of the eye witnesses is really not inconsistent with the medical evidence and is also not correct to say that the eye witnesses had appeared as witnesses in numerous criminal cases and had supported each other. The learned counsel for the respondents-accused tried to support the findings recorded by the High Court on the same grounds as are given by the High Court.

It is now not in dispute that the incident took place at about 4.15 p.m. in Gali No. 4 of Than Singh Nagar, falling within Anand Parbat Police Post, situated at a distance of about 2.5 Kms. from Patel Nagar Police Station. The FIR (Ex. PW-8/B) shows that it was recorded at about 5.35 p.m. It refers to D.D. entry No. 16A (Ex. DW-2A), which has been heavily relied upon by the High Court for doubting the correctness of the entries made in the FIR regarding time and names of the accused. The said entry was proved by Head Constable Om Prakash (DW-2), and reads as under :-

"Copy of report No. 16/A dated 19.2.82 of the roznamcha maintained at Police Station Patel Nagar.

D.O. Intimation for the registration of case (FIR) No. 110 for an offence punishable under s/s 302/34 IPC .
Time 5.35 P.M.

At this time a writing in hindi, prepared and sent by S.I. Dharam Pal I/c P.P. Anand Parbat, Delhi on the basis of statement made by Shri Babu Ram s/o Shri Prem Singh r/o H.No. 187A, Gali No. 7, Than Singh Nagar, Anand Parbat New Delhi has been received at the police station

for registering a case punishable u/s 302/34 IPC through Const. Ram Pal No. 569/C. On the basis of which a case (FIR) No. 110 u/s. 302/34 IPC was prepared. Scribed by ASI/DO"

The High Court, after referring to this entry and the evidence of Jai Pal Singh (PW-8), held that what was sent by S.I.Dharam Pal (PW-15) was only an intimation to register an offence and as names of accused, witnesses were not known till then the formal FIR was not prepared at that time. What the High Court had overlooked is the object of making that entry. As an intimation was received from an officer in charge of a police post, that fact was noted in the daily diary. The said entry refers to the writing in Hindi, prepared by Sub-inspector Dharam Pal on the basis of the statement made by Babu Ram. That report was also produced and marked Ex. PW-8/A. It appears below the statement of Babu Ram, which is marked as Ex. PW-3/A. The report contains the names of the accused and the witnesses and also the substance of the information received by him. The statement of Babu Ram also contained all those details. This report was dispatched at 5.00 p.m. as stated in the report itself. The High Court really misunderstood the D.D. entry No. 16A and overlooked the other evidence in that behalf. Therefore, its finding based upon such improper appreciation stands vitiated.

The High Court also failed to take into consideration the extracts produced from the register of malkhana maintained at Patel Nagar Police Station (Ex. PW-14/A), which also show that by 1.30 a.m. the blood stained cloths of accused Om Prakash, Lala Ram and Thakur Singh were already deposited in the malkhana. It is also in evidence that the letter of request written by sub-inspector Dharam Pal to the C.M.O. Police Hospital for conducting post-mortem on the dead body of Padam Singh was received in the hospital at night. All these pieces of evidence clearly establish that all the details regarding the incident have reached the police station by about 5.30 p.m. We therefore, hold that there was no delay in recording the FIR and that it was truly recorded.

Even if it is believed that the special report, which was sent to the Metropolitan Magistrate, was received by him on 20.2.1982 at 10.00 a.m. that circumstance in the facts of this case cannot be regarded as sufficient to create a doubt regarding genuineness of the time and other details contained in the First Information Report. As stated earlier many other documents, which had already come into existence by 1.30 a.m. and genuineness of which could not have been doubted, contain names of the accused and description of the weapons with which they had attacked the deceased.

On close scrutiny of the evidence of the two eye witnesses, we find that High Court was not right in discarding their evidence on the ground that their evidence is not consistent with the medical evidence and that the eye witnesses had appeared as witnesses in numerous criminal cases. The evidence on record does not show that they had appeared as witnesses in number of criminal cases together or separately. What the defence has been able to establish is that only in one case under Section 324 IPC Babu Ram, Pyare Lal and Sua Lal were the witnesses. Pyare Lal and Prabhu Dayal are co-accused in one criminal case. But that was an election case and the offence was regarding fixing of posters. That case was filed against as many as 73 persons. Prabhu Dayal was a witness in one case filed by the mother

of Babu Ram. From this evidence it was not proper to record a finding that es Babu Ram, Pyare Lal and Prabhu Dayal were often appearing as witnesses in criminal cases and were supporting each other. They were residing in the same locality and Babu Ram being a social worker it was quite natural that he knew some of the eye-witnesses and was either a co-accused or a co-witness in some court cases. Expect the cases referred to above Babu Ram, Pyare Lal and Prabhu Dayal did not appear as witnesses together in any other case. It was, therefore, not proper to reject their evidence on the ground that they were not reliable witnesses.

We are also of the view that their evidence ought not to have been discarded on the ground that the same was inconsistency with the medical evidence. Injury No 8 was on the back of the deceased. No doubt the eye-witnesses have stated that accuse Om Prakash had caught Padam Singh from behind by putting his hands around the waist of Padam Singh. The hands of Padam Singh were free as they were above the grip of Om Prakash. That would indicate that the movement on the part of Padam Singh was possible and the whole of his back was not covered by the body of Om Prakash. Therefore, merely because the prosecution witnesses had stated that deceased Padam Singh was held by Om Prakash from behind it cannot be said that no blow with a knife could have been given by the other accused on the back of the deceased.

The High Court also committed a grave error in doubting the prosecution evidence on the ground that no independent witnesses were examined. Though the incident had happened during the day time there is nothing on record to show that other persons had witnessed the same. Nothing has been brought out in the evidence of the Investigation Officer on the basis of which it can be said that the investigation had disclosed that there were other eye witnesses. In absence of any material it was not at all proper to reject the prosecution evidence on the ground that independent witnesses from the locality were not examined as eye witnesses.

As we find that the High Court has rejected the evidence of the three eye-witnesses on grounds which are not sustainable the order of acquittal passed by it will have to be set aside. That is not a case where on appreciation of evidence a different view has been taken. As pointed out above the findings of the High Court are based upon incorrect reading of the evidence and grounds which are not tenable. We, therefore, allow these appeals, set aside the judgment and order of acquittal passed by the High Court and restore the judgment of the trial court whereby the accused respondents were convicted under Section 302 read with Section 34 IPC and sentenced to suffer imprisonment for life. As the accused have been released on bail during the pendency of these appeals, they are ordered to surrender to custody immediately so as to serve out the remaining part of their sentence.