

CASE NO.:
Appeal (crl.) 517 1992

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
MUNDRIKA & ORS.

DATE OF JUDGMENT: 12/12/2000

BENCH:
R.C.Lahoti, S.V.Patil

JUDGMENT:

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J U D G M E N T

R.C. Lahoti, J.

The State of Uttar Pradesh has filed this appeal by special leave putting in issue the judgment of the High Court whereby Mundrika, Brindaban Mouria and Ram Asrey, the three accused respondents have been acquitted setting aside the conviction of Mundrika under Section 302 & the other two under Section 302/34, I.P.C. Brindaban Mouria, the accused respondent No.2 had expired during the pendency of appeal in the High Court. Apparently it is a mistake, rather an act of carelessness to have impleaded him as respondent No.2 in the memo of special leave petition.

The charge against the three accused persons related to the homicidal death of one Dharamdeo caused on 20.10.1982 at about noon in Village Raghunathpur, Police Station Harpur Budhat, District Gorakhpur. Smt. Kabutra, P.W.1, is the mother of the deceased Dharamdeo. She had an agricultural land in village Raghunathpur wherein gram crop was sown at the time of the incident. On 19.10.1982, four persons namely Ori, Lachhan, Ragghu and Musafir were seen up-rooting the crop in the field of Kabutra which was objected to by her and her brother-in-law Shyam Lal. On 20.10.82 again Ori and Lachhan were seen up-rooting the gram crop of Kabutra and also ploughing into her field. Kabutra and Shyam Lal again protested. There was a scuffle. Mundrika threatened that the entire family of Smt. Kabutra would be finished and he would see the matter being settled through the police station.

Both the parties appeared to have lodged reports with the police station. Shambhu Singh, P.W.5, with the help of a few police constables reached at the site of the dispute

and found Dharamdeo, the deceased, his uncle Shyam Lal, Ori and one another exchanging hot words and grappling with each other. They were arrested under Section 151, Cr.P.C. and taken to the police station in a jeep. At or about 12.30 p.m. an entry was made in the general diary of the police station. The incident took place at a point of time when the persons, including Dharamdeo, brought to the police station were in the process of being sent to the police lockup from outside the police station. At that point of time Ram Asrey, the appellant, hit Dharamdeo with his hands from behind aiming at the head of Dharamdeo, as a result of which he fell down. Accused Brindaban instigated the accused Mundrika to strangle Dharamdeo by his neck whereupon Mundrika pressed the neck of Dharamdeo causing his instantaneous death on the spot. A crowd had collected at the place of the incident. Some people in the crowd were shouting that Dharamdeo had an attack of epilepsy and some were shouting that Dharamdeo was killed. Gorakh Singh, P.W.4, the Station Officer was taking his lunch while Shambhu Singh, P.W.5, Sub-Inspector was busy in the office making some entries in the record. Both of them rushed out of the police station and found Dharamdeo lying on the ground. Dr. Ramesh Chandra, a nearby physician, was called who examined Dharamdeo and declared him dead. Information was given to the District Magistrate and the Senior Superintendent of Police in as much as Dharamdeo had died while he was in police custody. Inquest and usual investigation followed. At the end the three accused persons were charge sheeted and put up for trial. The trial court held the accused Mundrika guilty of offence under Section 302 IPC. The accused Ram Asrey and Brindaban Mouria were found guilty of an offence under Section 302/34 IPC. All the three were sentenced to imprisonment for life by the learned Session Judge. All the three appealed. As already stated, the accused Brindaban Mouria died during the pendency of the appeal and his appeal abated. The remaining two have been acquitted as in the opinion of the High Court the prosecution case was not proved to hilt.

The conviction rests on the testimony of three eye witnesses namely Smt. Kabutra, P.W.1, Shiv Dass, P.W.2 and Bhullar Prasad, P.W.6. The High Court has in very many details scrutinised the testimony of all the three witnesses and found their statements conflicting with each other and unworthy of reliance. As to Smt. Kabutra, P.W.1, the High Court has found that she was not even present at the time of the incident. She had heard rumours in the village of Dharamdeo having died at the police station. Whereafter she had swung into action. The High Court has also found that Ram Asrey, the appellant, was not even previously known to Smt. Kabutra and it was not satisfactorily explained as to how his name found place in the statement of Smt. Kabutra. There was a litigation going on in Revenue Courts between Smt. Kabutra and accused Brindaban Mouria. The possibility of the latter having been falsely implicated could not be ruled out. A written report of the incident was lodged by Smt. Kabutra at the police station but therein the manner of assault resulting into the death of Dharamdeo is not mentioned and no satisfactory explanation was assigned for this material omission in the F.I.R. As to Shiv Dass, P.W.2, the High Court has found that his statement was recorded belatedly three months after the date of the incident. This unexplained gross delay in the recording of the statement of a material eye witness throw a serious doubt as to whether he was really an eye witness or not.

The manner in which the deceased was assaulted and died was narrated by Shiv Dass in a way which was materially at divergence with the narration of the incident given by Smt. Kabutra. There were material contradictions between his court statement and the statement recorded by the investigating officer under Section 161 Cr.P.C.. In the opinion of the High Court it was extremely doubtful, if not impossible, to hold that he was an eye-witness. From the testimony of Bhullar Prasad, P.W.6, a third version of the incident was spelt out. He was one of the police personnel attached with the police station and it appeared that he was giving a cautious statement so as to save himself. On a critical appreciation of the testimony available on record, the High Court held — the conclusion is irresistible that the truth has been attempted to be obliterated in such a manner so as to screen the real offender or create doubt about the persons put in the dock as accused and, therefore, challan of the accused was an eye wash for the general public.

From a perusal of the judgment of the High Court it appears that Dharamdeo, the deceased, who was apprehended by the police and was in their custody died during the course of his being brought to the police station and being put up in the lockup. People of the village were agitated on the death of Dharamdeo whilst in police custody and so the record was manipulated by police people and false story cooked up to hush up the incident. The High Court has made a strong observation in this regard and directed the record of the police station to be thoroughly examined by holding a departmental enquiry so as to bring to book such of the police personnel who may be found guilty of misconduct or negligence or dereliction of duty resulting into the death of Dharamdeo whilst he was in the custody of police.

Having heard the learned counsel for the parties and having gone through the evidence available on record, we are of the opinion that no fault can be found with the reasoning assigned and the findings arrived at by the High Court. The appeal is, therefore, dismissed. The judgment of the High Court acquitting the accused respondents is maintained. We hope that departmental proceedings in accordance with the observations made by the High Court were initiated and pursued to their logical end.