

CASE NO.:
Appeal (civil) 729 of 1994

PETITIONER:
State of Rajasthan

RESPONDENT:
Sheo Singh & Ors.

DATE OF JUDGMENT: 20/02/2003

BENCH:
S.N.VARIAVA & B.N.AGRAWAL

JUDGMENT:

J U D G M E N T

B.N.AGRAWAL, J.

The five respondents along with nineteen other accused persons were charged and tried and by judgment dated 3rd February, 1993 passed by the Additional Sessions Judge, Jhalawar, other nineteen accused persons were acquitted whereas the respondents were convicted under Sections 302/149 of the Penal Code and sentenced to undergo rigorous imprisonment for life besides fine of Rs. 500/- each and in default to undergo rigorous imprisonment for a period of three months. They were further convicted under Section 147 of the Penal Code and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 100/- each and in default to undergo rigorous imprisonment for a period of one month. The respondents were also convicted under Section 148 of the Penal Code and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 200/- each and in default to undergo rigorous imprisonment for a period of two months. All the sentences were, however, ordered to run concurrently. On appeal being preferred, the High Court acquitted the respondents of all the charges.

Prosecution case, in short, is that on 14th February, 1990, Manna Lal and Kanwar Lal were coming from village Gehoon Kheda and when they arrived on a pathway at about 2.00 p.m. near the field of one Chandra Singh, Gopal (PW 4), who was working on his field, found that all the accused persons, including the respondents, armed with sword and gandas, who were waiting there from before in the field of Chandra Singh, chased Manna Lal and Kanwar Lal and assaulted them with their respective weapons. Seeing the assault on Manna Lal and Kanwar Lal, who were uncle and father respectively of Gopal (PW 4), he went towards the village and on the way met his brothers Kalyan (PW 5), Jamna Lal (PW 6) and Dhanna Lal (PW 8) and disclosed to them names of the accused persons, including the respondents. Thereupon, the aforesaid three persons came to the place of occurrence and saw the accused persons fleeing away. Manna Lal died instantaneously but Kanwar Lal, who succumbed to the injuries after some time, made an oral dying declaration before the informant-PW 4 disclosing therein names of the accused persons, including respondent Sheo Singh and one Ram Singh, without disclosing their parentage. According to the first information report, the occurrence was witnessed by Mangi Lal Bagri (PW 7) and Mangi Lal Meena besides the informant-PW4. On the basis of the statement of Gopal (PW 4), the first information report is said to have been lodged on the same day at 4.00 p.m.

The police after registering the case took up investigation and on completion thereof submitted charge sheet on receipt whereof, the Magistrate took cognizance and committed all the twenty four accused persons, including the respondents, to the court of Session to face trial.

Defence of the accused, in short, is that they are innocent, had no complicity with the crime but were falsely implicated to feed fat the old grudge. According to them, the victims might have received injuries in some other manner of occurrence at the hands of some unknown persons and they have

been roped in in the present case out of animosity.

During trial, the prosecution examined 18 witnesses in support of its case. The Additional Sessions Judge upon the conclusion of trial acquitted other nineteen accused persons but convicted the respondents as stated above. On appeal being preferred, the High Court acquitted the respondents of all the charges. Hence, this appeal by Special Leave.

Ms. Sandhya Goswami, learned counsel appearing on behalf of the State of Rajasthan, in support of the appeal submitted that the High Court was not justified in acquitting the respondents of the charges and the reasonings for acquittal recorded by it are perverse. On the other hand, Mr. S.R.Bajwa, learned Senior counsel appearing on behalf of the respondents, could not justify reasoning of the High Court for recording acquittal, but submitted that there are certain inherent infirmities in the prosecution case which have not been considered by the High Court. It was submitted that the order of acquittal should be confirmed because of the said infirmities.

We have been taken through the judgments rendered by the High Court as well as trial court. We are not at all impressed by the reasonings given by the High Court for recording acquittal but are of the view that the order of acquittal is fit to be upheld in view of certain circumstances enumerated hereinafter which would show that the prosecution case showing complicity of the respondents with the crime is highly doubtful.

According to the first information report, three persons namely, Gopal (PW 4-informant), Mangi Lal Bagri (PW 7) and Mange Lal Meena had witnessed the alleged occurrence. Apart from these three persons, Jamna Lal (PW 6) was examined, who claimed to be an eyewitness to the occurrence, but his evidence has been disbelieved by the trial court itself. Mangi Lal Bagri, (PW 7), who according to the FIR was an eyewitness, has been also disbelieved by the trial court. The third eyewitness is Mange Lal Meena who could have been independent witness to unfold the truth but for the reasons best known to the prosecution, his evidence has been withheld. Thus, the only eye witness remains is Gopal (PW 4).

PW 4-the informant is nobody else than the nephew of deceased Manna Lal and son of another deceased Kanwar Lal. He has admitted that his family and the accused persons were at daggers drawn. The first information report is said to have been recorded by the Sub-Inspector of Police Samdarshan Pandey (PW 18). This witness in his very examination-in-chief stated that when he went to Aklera police station to lodge a report, at the police station he met Bhanwar Singh, Station House Officer and narrated him the whole incident which was the first version of the occurrence disclosed by PW 4 before the police. But the said statement made by PW 4 before him has not been brought on the record and for the reasons best known to it withheld by the prosecution. It may be possible that in the said statement, PW 4 might not have disclosed names of any of the accused and subsequently, after due deliberation, the first information report was lodged roping therein the respondents as well which might be the reason for delay in sending the first information report to court for which no reasonable explanation has been furnished and the same would be apparent from the facts mentioned hereunder.

The explanation furnished by the prosecution for sending the first information report to court after two days is that because of general election, staff was not available on 14th and 15th February, 1990. The distance of police station is 18 k.m. from the place of occurrence. The police station, hospital and the court campus are within a radius of half a kilometer. According to the statement of Dr. Kundan Mal Jain (PW 17), constable brought two dead bodies for postmortem examination on 15th February, 1990. As the court campus and the hospital are within a radius of half a kilometer, there was no reason why the first information report was not handed over to the same constable who brought dead bodies to the hospital. Thus, the explanation furnished by the prosecution for causing delay in sending the first information report does not appear to be plausible and as according to the statement of PW 4 referred to above, the prosecution has withheld the first version of the occurrence disclosed before the police, the chances of manipulation in the first information report cannot be ruled out and the delay in sending the first information report to court becomes material.

It may be stated that the informant-PW4 stated in the first information report that his father-Kanwar Lal made a dying declaration before him in which

he disclosed names of seven persons, including respondent Sheo Singh besides one Ram Singh without disclosing his parentage and as two Ram Singhs are accused and only one of them is respondent, it is not known whose name was disclosed by informant's father before him in the dying declaration. So far this dying declaration said to have been made by informant's father before him is concerned, this could have been best piece of evidence so far respondent Sheo Singh is concerned, but the prosecution has given a complete go-by to the same as in the statement made in court, this witness did not state that his father made any dying declaration before him.

The informant (PW 4) specifically stated in his statement made in court that his father Kanwar Lal made a dying declaration before the police when it arrived and disclosed therein names of his assailants. It is not known whether in the said dying declaration, names of the respondents were mentioned or not. This could have been material evidence in support of the prosecution case showing complicity of the respondents with the crime. But the prosecution for the reasons best known to it has withheld the said dying declaration from court for which no reason whatsoever has been furnished.

The other two witnesses upon whom trial court placed reliance are Kalyan (PW 5) and Dhanna Lal (PW 8). According to the first information report, none of these witnesses was eyewitness, but when the informant went to the village after the occurrence, he met them on the way, disclosed the names of the accused persons to them and thereafter when they arrived at the place of occurrence, the accused persons were seen fleeing away. In court PW.4 has simply stated that on way to the village he met these witnesses, but did not state that he disclosed names of accused to them. Even these two witnesses have not stated that the informant disclosed names of the accused persons before them but simply stated that his father and uncle were murdered. Thus, the prosecution case that when the informant (PW 4) met these witnesses on his way to the village, he disclosed names of the accused persons has not been proved either by the informant or any other witness. These witnesses simply stated that PW 4 stated to them that Manna Lal and Kanwar Lal had been murdered and on their arrival at the place of occurrence, the accused persons, including the respondents, were seen fleeing away, which statement has not been supported by PW.4 as he has nowhere stated in court that these two witnesses had seen the accused persons fleeing away. In view of the fact that first version of the occurrence, as unfolded by PW 4, has been withheld by the prosecution, it is not safe to place reliance upon the evidence of this witness who is partisan and inimical witness, more so, when the dying declarations of Kanwar Lal made before the informant as well as the police disclosing therein names of the assailants have not been brought on the record. As the evidence of PW 4 becomes doubtful, it is not possible to place reliance upon the statements of PWs. 5 and 8 who claimed that they had seen the accused persons fleeing away, especially when the same are not corroborated by PW.4.

For the foregoing reasons, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt, as such it is not possible to interfere with the order of acquittal recorded by the High Court.

Accordingly, the appeal fails and the same is dismissed. The respondents, who are on bail are discharged from the liability of the bail bonds.