

PETITIONER:  
BAITULLAN & ANR.

Vs.

RESPONDENT:  
STATE OF U.P.

DATE OF JUDGMENT: 17/10/1997

BENCH:  
M.M. PUNCHHI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

#### J U D G M E N T

K. Venkataswami, J.

This appeal is preferred under section 379 of the code of Criminal Procedure in connection with a double murder which took place at about 10.00 a.m. on 26.4.79. Seven accused, namely, Sirajul Haq, Abdulas, Anwar Ali, Zainul Abidin, Yunus, Haroon and Baitullah, were charged under Section 147, 148, 302 read with Section 149, I.P.C. The case of the prosecution as culled out from the paper book is as follows:-

On the fateful day the deceased Nabi Rasool, brother of informant in the case and another deceased Nisar Ahmed, cousin of the informant, were going from east to west in Chhithi village within Mahuli Police Station, Pasti, District. When all the accused were concealing their presence behind a Masjid, which was on the eastern side of the house of Sirajul Haq accused. On this, the deceased raised alarms and ran towards the north of the Masjid, At that time PWs.2,3 and 4, who were sitting at the door of one Abdul Rashid, ran towards them. In the meantime, A-2 dealt a spear blow on the chest of Nisar Ahmad. On account of that he fell down in the field of Mujibullah and died instantaneously. Accused 5 to 7 surrounded Nabi Rasool and caused spear injuries to him. Nabi Rasool ran with the injuries on his body and fell down in the room of one Mohd. Hussain. He was taken later on to the Hospital where he died at 7.10 p.m. on 26.4.79. When PWs. 2 to 4 and others rushed to save the victim the accused made good their escape.

After the incident, PW.2, Informant, gave a Report and the FIR was lodged on the same day at 11.00 a.m. on the basis of the written report given by the Informant. PW.6, a Sub-inspector, reached the place of occurrence at 11.45 a.m. and prepared an Inquest Report and the dead body of Nisar Ahmad was sent to the mortuary. Thereafter, he examined the prosecution witnesses. On their pointing out he prepared a site plan in respect of the place of occurrence, recovered blood stained and ordinary earth from the place of occurrence and a recovery memo was prepared in respect thereof.

PW.1 the Doctor who conducted the post-mortem of the deceased Nizar Ahmad, found the following ante-mortem injury:

"Punctured wound 3 cms. x 2.5 cms. x chest cavity deep over left side of chest 2 cms medial to left nipple, placed vertically, directed oblique medially and backward. The margins of wound are quite sharp and gaping. The injury is situated by the side of sternal bone cutting 4th and 5th (ribs.) cartilages vertically and thoroughly. Internal examination revealed cutting of 4th and 5th cartilages under the injury. The surface of chest-wall was congested under the injury 2.5 litres of blood was found in the chest cavity. Pericardial sac. was punctured 3 cm x 1 cm. x 0.6 cm. Rest of the internal organs were normal.

The Doctor was of the opinion that the death of Nizar Ahmad was due to shock and haemorrhage as a result of ante-mortem injury. One Dr. Avinash Chandra examined the injuries inflicted on by Nabi Rasool and found the following injuries on the body of Nabi Rasool when he was brought to the Hospital:-

"(1) Punctured wound 4 cms. x 2 cms. x plural cavity deep right side front of chest vertically placed 14 cms. away from right nipple. Bleeding present kept under observation, Margins sharp.  
(2) Abrasion 1 cm. x 1 cm. on right thumb.  
(3) Incised wound 1 cm. x 0.2 cm. x muscle deep on left thumb, stern aspect.

According to the Doctor, Injury Nos.1 and 3 were caused by sharp-edged point weapon and they were fresh at the time of examination. After the death of Nabi Rasool, PW.1 conducted the post-mortem of deceased Nabi Rasool and he gave his report as follows:-

"1. Stitched wound 4.5 cms. long with 4 stitches. After removal of stitches, the margins are sharp. The wound is stitched over right side of chest in posterior axillary line 6.5 cms. below axillary. Placed vertically Directed slightly medially and downwards, underneath 4th and ribs are cut sharply, The depth of the wound extends upto line.  
2. Stitched wound with one stitch over dorsum of left thumb in middle, removal of stitch shows skin deep depth.  
3. Abrasion 1 cm. x 0.5 cm. over base of dorsum of right thumb.  
4. Incised wound 0.6 cm. x 0.2 cm. x skin deep over dorsum and middle of right index finger.  
Internal examination revealed that

the right liver and lung were punctured under Injury No.1 In the opinion of the Doctor, death was due to shock and haemorrhage as a result of ante-mortem injury No.1."

All the accused pleaded not guilty and claimed trial. At the trial the prosecution examined seven witnesses. Out of them PWs. 2 to 4 were eye-witnesses. On the side of the defence, two Doctors were examined as DWs. 1 and 2 to speak out about the injuries found on the body of accused Haroon.

PWs. 2,3 and 4 deposed stating that Adulas (A-2) gave a spear blow to Nisar Ahmad in his chest as a result of which he fell down and died instantaneously. They also spoke about the role played by accused Haroon. Baitullah and Yunus stating that they seized Nabi Rasool and gave spear blows to him. In the light of the consistent evidence given by PWs. 2,3 and 4, the learned counsel for the defence appears to have accepted the fact that the two deceased were injured on the date, time and place and also in the manner alleged by the prosecution. in fact, the Trial Court observed as follows:-

"In view of all this evidence the learned counsel for the defence has also not seriously disputed the fact that the two deceased were injured on the date, time and place and in the manner alleged by the prosecution."

On the basis of the above, the Trial Court gave the following finding:-

"Subject to this finding it is held that the prosecution has fully established that the two deceased were murdered on the date, time and place and in the manner alleged by the prosecution."

Nevertheless, the Tribal Court acquitted all the seven accused mainly on the ground that the motive suggested for the occurrence has not been established, that PWs. 2 to 4 cannot be believed for convicting the accused as their presence in the scene of occurrence cannot be implicitly believed and they are all interested witnesses. In addition to the above, the Trial Court also accepted the case of the defence that they caused the injuries to the deceased in exercise of their right to self defence. The Trial Court on the issue of private defence held as follows:-

"I am, therefore, of the opinion that accused Haroon and other persons who caused injuries to the deceased acted within the ambit of right of self-defence of person and they are not held to have committed any offence."

On the basis of this finding, the Trial Court acquitted all the accused.

On appeal by the State, the Trial Court admitted the appeal only against three accused, namely, A-2 (Abdulas), A-6 (Haroon) and A-7 (Baitullah).

The High Court on a thorough reconsideration of the case and appreciating afresh the evidence both oral and documentary, differed from the findings given by the Trial Court.

On the question of motive disagreeing with the learned Sessions Judge, the High Court found that the Haroon for injunction to restrain the accused Haroon from proceeding

with the illegal construction on the land of Sarakat. Despite the stay ordered by the Trial Court, constructions were going on and the Police had to be summoned in this connection. Therefore, the High Court found that it cannot be said that the accused party had no immediate motive for commission of the offence. In any case, the High Court also found that when there is a direct evidence of eye-witness against the accused the question of motive would plate into insignificance.

Regarding the presence of PWs.2 of 4 at the scene of occurrence differing from the Trial Court, the High Court found that there was no inconsistency in the statements of witnesses in respect of their presence at the house of Rashid and after carefully and closely examining the testimony of the witnesses on this point, the High Court found "we feel that the evidence of the witnesses does not suffer from any inconsistency in respect of the place where they were sitting at the time of incident and the place from where they saw the incident though it could not be alleged that they were near the spot". On the aspect of interested witnesses, the High Court rightly observed that even if it is assumed that the witnesses were interested, their evidence could not be discarded on that ground alone as they would be the last persons to implicate the accused person falsely permitting the real culprits to go scot free. The High Court held that the learned Sessions Judge was not justified in rejecting the evidence of eye-witnesses on the ground that two out of them were inter se related and the third one was inimical to the accused.

Coming to the self-defence set up by the accused on the basis of injuries found on the body of the accused Haroon, the High Court found on an analysis of the evidence that nobody on the side of the deceased including witnesses had any weapon or lathi at the time of incident and they had not caused any injury to accused Haroon. The High Court also observed "that none of those two accused Haroon and Baitullah stated where from they got the spears and used them in self-defence. In case they had already spears and were searching for their prey and they inflicted injuries, according to the High Court, there was no reason to discard the prosecution version that the two accused, namely, Haroon and Baitullah, were already armed with spears and they used them during the incident. The High Court also found that the injury found on the body of Haroon as spoken to by the prosecution witnesses might have been caused while using the spars by the accused themselves against the deceased. Ultimately, the High Court concluded thus:-

"We have thoroughly examined the evidence on record and find that three eye witnesses have categorically stated that Abdulas inflicted spear injuries to Nisar Ahmad who died instantaneously on the spot due to spear injuries caused by Abdulas. So far as the death of Nabi Rasool is concerned, we have already observed that Haroon and Baitullah are the persons responsible for his death. We do not find any material inconsistency in the statement of witnesses to discard their testimony in respect of the incident which testimony in respect of the incident which took place in

broad day light and the F.I.R. was lodged promptly within one hour by the informant and Nabi Rasool was examined at 1.00 p.m. in the district hospital, which totally excludes the embellishment and deliberations in the prosecution case. In our opinion, the prosecution has successfully proved its case beyond any reasonable shadow of doubt. Consequently, the appeal should succeed. Accordingly, the appeal is allowed."

It is under these circumstances the present appeal was preferred under Section 379, Cr.P.C.

Mr. Lalit, learned senior counsel, brought to our notice that pending this appeal accused No.6 (Haroon) died. Hence, the appeal is prosecuted only by the remaining two accused, namely, Abdulas and Baitullah. Mr. Lalit contended that the motive suggested by the prosecution has not been established as rightly found by the Trial Court. The occurrence, admittedly, took place during broad day light at about 10.00 a.m. and admittedly, apart from Pws. 2 to 4 a number of other persons have seen the occurrence, but no other independent witness came forward to give evidence supporting the prosecution. One of the accused Anwar Ali (A-3) pleaded alibi and he was acquitted and, therefore, the evidence of Pws. 2 to 4 cannot be believed and the Trial Court rightly discarded their evidence. According to the learned counsel, the acquittal by the Trial Court was based on a large number of circumstances and the High Court was not justified in reversing the acquittal and convicting the appellants.

Mr. Mathur, the learned senior counsel appearing for the respondent, submitted that the High Court had jurisdiction to reappraise the evidence and the reasonings given by it for differing from the Trial Court are well founded and they do not call for any interference by this Court.

We have considered the submissions made at the bar and have carefully gone through the judgment of both the courts below and also the evidence and other materials placed before us. We have noticed earlier that the Trial Court gave a finding to the effect that the prosecution has fully established that the two deceased were murdered on the date, time and place and in the manner alleged by the prosecution. This finding was on the basis of the stand taken by the counsel for the defence. Bearing this in mind we proceed further. It is an admitted fact that Abdulas (A-2) caused spear blow in the vital part of Nisar Ahmad, which resulted in his instantaneous death. The nature of the injury caused by the weapon used on the vital part of the body, be it noted against an unarmed person negates any just plea for right to self defence. Here we have to point out that it is very well established by a catena of cases of this Court that when the occurrence was spoken to by eye-witness and the same was supported by Medical Report, it will not be necessary to investigate the motive behind such commission of offence. In other words, where a murderous assault has been established by clear ocular evidence, motive pales into insignificance as rightly found by the High Court. We do not find any circumstance which would come to the aid of Abdulas to get out of the conviction awarded by the High Court. The High Court in its well reasoned and considered judgment has

accepted the appeal only against three accused out of seven. Coming to accused No.7 (Baitullah), we find from the records that he has admitted that he wielded the spear but, according to him, in self-defence. As pointed out by the High Court, the question of self-defence in this case may not arise when the deceased as well as PWs.2 to 4 who were near the scene of occurrence, were totally unarmed. Therefore, the High Court was right in rejecting the plea of self-defence. Hence again, the nature of injury inflicted on deceased Nabi Rasool, who has also given a statement while alive which has been referred to by the High Court, speak against the defence taken by the accused. As a matter of fact, we have seen that PW.2 has spoken in his evidence that certain witnesses cited by the prosecution could not be examined as they were won over by the accused. Moreover, there is nothing in the cross-examination of PWs.2 to 4 seriously to discard their version about the occurrence. The High Court has rightly pointed out that merely because the witnesses are interested/related, their evidence, cannot be brushed aside as it is normally expected that they will not leave out the real culprits and rope in the innocent persons.

This Court in *Arjun & Ors. Vs. State of Rajasthan* (1994 Supp (3) SCC 189) while considering the contention about the reliability of interested and inimical evidence, observed thus:-

"Learned counsel for the appellants first contended that there was long standing enmity between the complainant and some of the witnesses on one hand and the appellants on the other and some criminal proceedings between them were going on when the alleged incident took place and hence it was due to this enmity that the appellants were falsely implicated. It was also submitted that Bahori, PW 1 and Sat Pal Singh, PW 7 are also relatives of the deceased and other prosecution witnesses are also close associates and, therefore, there is possibility of false implication of the appellants in the crime in question. It is an admitted fact that the complainant and the appellants were on inimical terms and some criminal proceedings were pending between them even at the time when the occurrence took place. It is equally true that Bahori, PW 1 is brother of the deceased and informant Sat Pal Singh, PW 7 is the son of the deceased. But we are not convinced by the aforesaid arguments that either on account of animosity or on account of relationship they did not divulge the truth but fabricated a false case against the appellants. It is needless to emphasise that enmity is a double-edged sword which can cut both ways. However, the fact remains that whether the prosecution

witnesses are close relatives of the deceased victim or on inimical terms with the deceased involved in the crime of murder, the witnesses are always interested to see that the real offenders of the crime are booked and they are not, in any case, expected to leave out the real culprits and rope in the innocent persons simply because of the enmity. It is, therefore, not a safe rule to reject their testimony merely on the ground that the complainant and the accused persons were on inimical terms. Similarly the evidence could not be rejected merely on the basis of relationship of the witnesses with the deceased. In such a situation it only puts the Court with the solemn duty to make a deeper probe and scrutinise the evidence with more than ordinary care which precaution has already been taken by the two courts below while analysing and accepting the evidence.

After considering carefully the judgments of the courts below and the relevant documents, we do not find any infirmity in the judgment of the High Court warranting interference by this Court. Accordingly, the appeal is dismissed.