

PETITIONER:
RAM LAKHAN & OTHERS

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 11/07/1996

BENCH:
MUKHERJEE M.K. (J)
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MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

CITATION:
JT 1996 (6) 629 1996 SCALE (5)150

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P.KURDUKAR, J.

On 17-9-1975 at about 5.00 p.m. in a small village called Baddapur, under Police Station Loni Katra in district Barabanki, three gruesome murders of Ram Sewak, Hari Prasad and Bhola took place. Ram Sewak and Hari Prasad. On the fateful day, Ram Sewak had gone to Haidergarh market while complainant Jang Bahadur (PW 1) had gone to Tejwapur market. Jang Bahadur after finishing his work in the market was returning to his village alongwith Devi Dayal and Hanuman on the Canal Patri and when they reached near the grove of Jagdamba Singh, they heard a big sound of explosion of hand grenade. They also heard cries coming from the side of the field of Gaya Prasad. When Jang Bahadur (P.W.1) looked towards the said field, he noticed Ram Sewak being attacked by accused persons, namely, Bishambhar, Maharaj Din, Deoki Nandan, Rameshwar, Ram Lakhan, Sri Chand, Jagat and four unknown persons. Due to murderous assault, Ram Sewak died on the spot. Within a short time, they heard another alarm coming from western side of the well of Hair Prasad and therefore they went in that direction. It was then noticed that Hari Prasad and Bhola were lying dead on the ground. Bindeshwari and Sursa daughters of Ram Sewak were near the place of incident and these two daughters told Jang Bahadur that Shambhu, Maharaj Din, Rameshwar, Ram Lakhan, Sri Chand, Jagat and four other persons had assaulted Hari Prasad and Bhola. Jang Bahadur after seeing the gruesome murders of three persons immediately rushed to the abadi of Baddapur which is at a distance of two and a half furlongs. Jang Bahadur (PW 1) then with to the Police Station Loni Katra which is about three miles away from the village Baddapur and lodged the FIR at about 8.30 P.M (FIR Ex.KA-16). After registering the crime, the Investigating Officer went to village Baddapur and commenced the investigation. After completing the investigating he submitted the charge sheet against seven accused persons for offences punishable under

section 147, 148, 302 read with section 149 of the Indian Penal Code. The accused were put up for trial before the Ist Addl. District and Sessions Judge, Barabanki.

2. The accused denied the charges and claimed to be tried. According to them, they are innocent and they have been falsely implicated due to enmity.

3. The prosecution in support of its case examined as many as eight witnesses out of which Jang Bahadur (PW 1), Bindeshwari (PW 2), Ganga Ram (PW 4) and Devi Dayal (PW 8) are eye witnesses. One Layak Ram (PW 3) was also examined by the prosecution but during the course of recording of his evidence, he was found not supporting the prosecution fully and, therefore, he was allowed to be cross-examined by Public Prosecutor. Prosecution also examined other formal witness to prove various panchnamas. Dr. Beni Madho Gupta (P.W.17) was examined to prove the post-mortem examination reports (Exs.KA 20, KA 21 and KA 22).

4. The Ist Addl. District and Sessions Judge, Barabanki, after appraisal of oral and documentary evidence on record vide his judgment and order dated 2-7-1977 acquitted all the accused.

5. State of Uttar Pradesh being aggrieved by the order of acquittal passed by the Trial Court preferred an appeal to the High Court on re-appraisal of the evidence on record vide its judgment and order dated 16-5-1988 allowed the appeal partly. The High Court reversed the order of acquittal of Bishambhar Dass, Ram Lakhan, Sri Chand, Jagat Narain and Rameshwar but, confirmed the order of acquittal in respect of remaining accused. It was then brought to the notice of the High Court that Bishambhar Dass and Rameshwar (accused) died during the pendency of the appeal and accordingly the appeal stood abated against them and came to be dismissed. The High Court found that Ram Lakhan, Sri Chand and Jagat Narain were responsible for murders of Ram Sewak, Hari Prasad and Bhola and accordingly convicted them under section 302 read with 149 of the Indian Penal Code and sentenced them to suffer life imprisonment. They were also convicted for rioting under section 147 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year. The High Court directed the substantive sentences to run concurrently. It is against this order of conviction and sentence passed by the High Court, the three appellants have filed this appeal to this Court challenging the legality and correctness thereof.

6. We have carefully gone through the judgments of the Courts below as well as the materials on record. Mr. J.M. Khanna, learned counsel appearing in support of this appeal firstly assailed the judgment of the High Court on the ground that the impugned order of conviction is illegal and wholly unjustified. Counsel urged that the order of acquittal passed by the trial court was quite justified inasmuch as the trial court, which had an occasion to observe the demeanour of the eye witnesses, preferred not to accept their evidence as trustworthy. The view taken by the trial court was a reasonable view and no justifiable grounds were given by the High Court while interfering with the order of acquittal. If two views are possible, the one in favour of the accused taken by the trial court ought not to have been upset by the High Court. We see no substance in this contention. On perusal of the judgment of the High Court, we find that the High Court has given cogent and well founded reasons on the basis of materials on record and has pointed out in its judgment how the order of acquittal is perverse and unsustainable. The Trial Court principally acquitted all the accused on the ground that the prosecution

has not examined the independent witnesses. All the eye witnesses are close relatives of the deceased and, therefore, their evidence is untrustworthy. This reasoning of the Trial Court is ex facie unsustainable. It is well settled that the evidence of close relatives cannot be excluded solely on the ground that they are interested witnesses. In such a situation, it is the duty of the Court to scrutinise the evidence of such witnesses very carefully and if there is any doubt as regards their trustworthiness, the Court may discard their evidence. The High Court, in our opinion, therefore, was fully justified in accepting the evidence of the four eye witnesses, namely, Jang Bahadur (PW 1), Bindeshwari (PW 2), Ganga Ram (PW 4) and Devi Dayal (PW 8). The evidence of these eye witnesses was found acceptable by the High Court, and, therefore, the High Court was fully justified in reversing the order of acquittal.

7. Mr. Khanna, learned counsel for the appellants then urged that the medical evidence adduced by the prosecution is again wholly inconsistent with the ocular evidence of the eye witnesses and if this be so, the ocular evidence was righted by the Trial Court. This submission is again devoid of any merits. The learned counsel for the appellants was unable to point out any inconsistency between the medical evidence and the evidence of eye witnesses.

8. It was then urged by Mr. Khanna that the prosecution has not led any evidence to prove the motive behind the murders of three persons. In the absence of any such motive having been proved by the prosecution, counsel urged that the entire prosecution case becomes doubtful. We are afraid that such a contention is totally untenable especially in view of the fact that there are as many as four eye witnesses who have actually seen the assault on these three victims.

9. Mr. Khanna took us through the evidence of Jang Bahadur (PW 1), Bindeshwari (PW 2), Ganga Ram (PW 3) and Devi Dayal (PW 8). He also took us through the evidence of Layak Ram (PW 3), who did not support the prosecution case and was cross-examined by the public Prosecutor. While assailing the evidence of Jang Bahadur (PW 1), counsel urged that he is a chance witness and it is not safe to rely upon the evidence of such witness. Secondly, it was submitted due to explosion of the grenades, there was a smoke in the atmosphere and, therefore, it was impossible for Jang Bahadur to identify any of these accused persons. We are unable to accept the criticism as regards the evidence of Jang Bahadur (PW 1). It is the positive case of this witness that when he returning from the market and reached near the place of incident, he heard the direction of the place of incident. He emphatically denied that he was unable to see because of the smoke emanating from the explosion of the grenades. At the very earliest opportunity, he disclosed the names of the appellants/accused in the FIR lodged on the same day at about 8.30 p.m (Ex.KA-16). In our opinion, his evidence is trustworthy and can safely be accepted.

10. Bindeshwari (PW 2) is a child witness who was about 14 years of age at the time of incident. She is the daughter of Ram Sewak and sister of Bhola (since deceased). Mr. Khanna submitted that the evidence of Bindeshwari is totally unreliable firstly, on the ground that she was a child witness at the time of incident and secondly, her presence at the place of incident at about 5.00 p.m. was extremely doubtful. He also urged that it is difficult to believe the evidence of Bindeshwari when she asserted that she waited for some time near the dead body of Ram Sawak and thereafter went to the place where the dead bodies of Hari Prasad and Bhola were lying. He further urged that the reason for going

to the field at about 5.00 p.m. given by the witness is totally unbelievable. We have gone through the evidence of Bindeshwari (PW 2) and in our opinion, she has very firmly stood to the cross-examination of the defence. We also do not see any substance in the submission that the conduct of Bindeshwari was in any way unnatural leaving the dead of her father Ram Sewak and going to the place where dead bodies Hari Prasad and Bhola were lying. She in her evidence has clearly indicated how the appellants assaulted Ram Sewak (deceased) near the field Gaya Prasad and thereafter Hari Prasad and Bhola near tubewell of Hari Prasad. She further stated that she had gone to the field for cutting the grass. The evidence of Bindeshwari is totally free from any doubt and we see no reason to reject the same. The High Court has elaborately discussed the evidence of Ganga Ram (PW 4) and Devi Dayal (PW 8) which in all material particulars corroborate the evidence of Bindeshwari (PW 2).

11. We have also gone through the medical evidence on record and in our opinion, the medical evidence is consistent with the ocular evidence of these eye witnesses. The High Court has very carefully considered the materials on record and has rightly held that the appellants are guilty of offences for which they were tried. We are in agreement with the reasons given by the High Court while convicting the appellants for the offences punishable under section 302 read with sections 149 and 147 of the Indian Penal Code. There is no substance in the appeal and it is accordingly dismissed. The appellants, who are on bail, shall surrender to their bailbonds to serve out the remainder of their sentences.