

CASE NO.:

Appeal (crl.) 199-200 of 1998

Appeal (crl.) 201-202 of 1998

PETITIONER:

RAKESH & ORS.

Vs.

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT: 18/07/2002

BENCH:

Y.K. Sabharwal, H.K. Sema.

JUDGMENT:

Y.K.Sabharwal, J.

In these appeals Arjun Singh, Rakesh, Mahesh, Rajbir and Sarjan Singh are the appellants. They have been convicted by the impugned judgment of the High Court for offences under Sections 147 and 302/149 IPC and ordered to undergo one year's rigorous imprisonment each for offence under Section 147 IPC and life imprisonment for offence under Section 302/149 IPC. The High Court had, thus, allowed the State appeal against acquittal in respect of Rakesh, Mahesh, Sarjan Singh and Rajbir and also the appeal of the State wherein Arjun Singh's conviction by the Sessions Court under Section 304 Part II/149 instead of 302/149 had been challenged. The Sessions Court had imposed on Arjun Singh the sentence for a period of five years for offence under Section 304 Part II/149 IPC besides one year for offence under Section 147 IPC. The appeal of Arjun Singh challenging his conviction by the Sessions Court was dismissed by the High Court.

All the aforesaid five accused along with Bhanwar Singh who died during the pendency of the appeal before the High Court were charged, inter alia, for offence under Sections 302/149 IPC for the murder of Dharam Pal. Along with Arjun Singh, Bhanwar Singh was also convicted by the Sessions Court for the offence as aforesaid for which Arjun Singh was convicted and similar imprisonment was imposed on Bhanwar Singh.

One Raja Ram was an M.L.A. Bhanwar Singh was his brother. Arjun Singh and Sarjan Singh are the sons of Raja Ram. Rajbir is his nephew. Mahesh was Secretary of the said Raja Ram. Dharam Pal, deceased in the present case, was accused of murder of Raja Ram. Dharam Pal was the uncle of Subhash Chand, PW1, who is the son of one Ambar Singh. Subhash Chand, Dharam Pal and Ambar Singh and one Laik Singh were four accused in the case of murder of Raja Ram which had taken place on 20th May, 1973. The incident which is the subject matter of these appeals took place on 20th February, 1975, when trial against Subhash Chand, Dharam Pal, Ambar Singh and Laik Singh was pending. They were convicted of the offence of murder of Raja Ram by Court of Sessions on 9th April, 1977, which was, however, set aside by the High Court in appeal on 6th November, 1984.

PW1, Subhash Chand, made a written complaint to the police which is the basis of the recording of the FIR, that, he accompanied by Dharam Pal was returning from the house of his Aunt and when they reached near octroi out-post, on pushing of bicycle by Bhanwar Singh, Rajbir, Arjun Singh, Rakesh, Mahesh and Raja Ram's younger son, Dharam Pal fell down. These people started beating Dharam Pal and he took refuge in the lane and kept on looking these p

persons beating Dharam Pal. The incident was seen by several persons viz. Rajbir, Ram Khilari (PW2), Kishan and Partap etc. PW1 requested in his report that Dharam Pal be got released from the house of Raja Ram lest these people may kill him. Soon after the report was lodged with S.H.O. Police Station, Ferozabad (South), S.I. Dharam Pal Singh PW4 went to the place of occurrence and found Dharam Pal lying in the house of late Raja Ram in precarious condition. The accused Bhanwar Singh and Arjun Singh were arrested from the place of occurrence. Besides other articles, their blood stained clothes were also recovered. Dharam Pal was sent to hospital. On the same day while the investigation was under progress, PW4 received intimation about the death of Dharam Pal in the hospital. According to Bhanwar Singh who had also lodged a report with the police, Dharam Pal had come to the house of Raja Ram to molest widow of Raja Ram.

The prosecution examined PW1 Subhash Chand, PW2 Ram Khilari, PW4 Dharam Pal Singh the Investigating Officer, besides PW3 a formal police witness.

The Sessions Court disbelieved the story of Dharam Pal having visited the house of Raja Ram with a view to molest his widow and on consideration of evidence convicted Bhanwar Singh and Arjun Singh as noticed hereinbefore. Dharam Pal was not in possession of any weapon. Their conviction by the Additional Sessions Judge, however, was not under Section 302/149, the offence for which they were charged but was under Section 304 Part II/149 IPC. The reason noticed by the learned Additional Sessions Judge for not convicting them of the offence charged was that it was not clear as to which of the injuries had proved fatal and who had caused the injuries. Regarding acquittal of the aforesaid four appellants, in the view of the Additional Sessions Judge, their identity had not been established and they were not caught from the place of occurrence like Bhanwar Singh and Arjun Singh.

The High Court, as already noticed, overturned the acquittal of the four accused and along with Arjun Singh they were held to be guilty for the offence of murder of Dharam Pal under Section 302/149 IPC.

We have heard Mr. Sushil Kumar, learned senior counsel in support of appellants Rakesh and Mahesh, Mr. Bhardwaj for Rajbir, Sarjan Singh and Arjun Singh and Mr. Praveen Swarup for the State.

Taking up the case of Arjun Singh first it is evident that the Sessions Court altogether lost sight of the injuries which were admittedly found on Dharam Pal. Since post mortem report was admitted, the formal proof was dispensed with on the consent of counsel for all the accused and that is the reason of non-examination of any doctor in the Court. The following ante-mortem injuries were found on the body of Dharam Pal.

1. Lacerated wound- 4 cm x 1.5 cm x bone deep on the right side of the head in front side about 7 cm above the eye brow.
2. Lacerated wound- 4 cm x 0.5 cm x bone deep on left side of head 8 cm above the left ear.
3. Contusion- 0.5 cm x 0.1 cm on the fore front of the nose towards down side. The inner bone was broken.
4. Lacerated wound- 1.5 cm x 1 cm on left cheek, 4 cm from the angle of mouth.
5. Many lacerated wounds which were crossing each other on the back from neck to buttock out of which the big wound was 24 cm x 2 cm and the small wound 2 cm x 1 cm in the area of 30 cm west.
6. Mark of contusion slanting 4 cm x 2 cm on the back of left shoulder.
7. Lacerated contusion- 4 cm x 5 cm left side of the neck on the lower side.
8. Lacerated wound- 1 cm x 0 cm x bone deep on left arm towards lower side as a result the fore arm bone was broken.
9. Lacerated wound- 2 cm x 1 cm x bone deep which was 0.5 cm below injury No.8 in one line.

10. Lacerated contusion mark- 10 cm x 1 cm on the left arm above the injury No.8.
11. Lacerated contusion marks 4 in numbers the biggest one was 7 cm x 2 cm to 20 cm x 1 cm on the back side of left fore arm.
12. Scratch 1 cm x 1 cm on the left small finger joint.
13. Lacerated wound- 2.5 cm x 5 cm x bone deep on left elbow backside.
14. Lacerated wound 1.5 cm x 0.5 cm x bone deep on the upper side of right elbow as a result thereof the lower bone was found broken and it came out.
15. Lacerated wound 1 cm x 1 cm x bone deep on the back side of left arm pit (Illegible).
16. Lacerated contusion mark 13 cm x 4 cm in the middle of right arm.
17. Swelling injury- 4 cm x 1 cm on the back side middle of right finger of right hand.
18. Mark of contusion which was on the whole case of the back of both the hands.
19. Lacerated wound- 5 cm x 4 cm on the left thigh which was on the area of 6 cm above the knee.
20. Scratch 1.5 cm x 0.5 cm upper side of left knee.
21. Six lacerated wounds out of which 2 cm x 1 cm x bone deep as a result thereof the lower bone was broken and it came out.
22. 6 lacerated wound on right leg each having the area of about 3 cm x 1.5 cm x bone deep (illegible).
23. Scratches on the backside of left knee.
24. Lacerated wound 0.5 cm x 1 cm x bone deep on left knee of left side injury No.22.

Many of the injuries are clearly deep injuries on head. The Sessions Court did not consider the impact of these injuries and instead convicted accused Arjun Singh for offence under Section 304 and not under Section 302 on the ground that it was not clear as to which of the injuries had proved fatal. The High Court has given valid and justifiable reasons for setting aside the conviction under Section 304 and convicting the accused for offence under Section 302/149 IPC. Regarding the reason as to who had caused injuries, the Sessions Court lost sight of the fact that the accused has also been charged for offence under Section 302/149 IPC. The view of the Sessions Court was clearly perverse and the High Court rightly convicted Arjun Singh as aforesaid.

Reverting to the appeals of the other four accused, Rakesh, Mahesh, Rajbir and Sarjan Singh, the Additional Sessions Judge after rejecting the defence story of Dharam Pal having visited the house of late Raja Ram to molest his widow held that Bhanwar Singh along with Arjun Singh and some other persons whose identity had not been properly established were concerned in the matter. In view of the identity not being established these four accused were acquitted by the Additional Sessions Judge who held that there might be some other Rajbir and some other Rakesh and some other Mahesh though undoubtedly Mahesh was the Secretary of Raja Ram and was involved in getting the bail of PW1 cancelled in the murder case against him. No specific role was established against him and insofar as Sarjan Singh is concerned his name was not mentioned in the FIR and for these reasons they were entitled to benefit of doubt, their identity having not been established. In the FIR though name of Sarjan Singh was not mentioned but person concerned was mentioned as younger son of Raja Ram. The High Court on thorough scrutiny of the evidence has reversed the judgment of acquittal of these accused and in our opinion rightly. The doubt in the story of the prosecution has to be reasonable and not imaginary.

It stands established that Rajbir is the son of sister of Raja Ram. Mahesh was his Secretary. He was responsible for getting the bail of Subhash Chand cancelled

d. Sarjan Singh is the younger son of Raja Ram. The names of these three along with Rakesh are mentioned in the FIR. The learned Additional Sessions Judge has also disbelieved the defence that injuries on Dharam Pal were the result of his fall. The omission to mention the parentage of the accused and the witnesses in the written report of PW1 did not show that the FIR was written afterwards. On the facts of the case, it rather lends assurance to the testimony of Subhash Chand. The report was lodged within minutes. The anxiety of PW1 was to save Dharam Pal from being beaten by the accused. He wanted immediate action. The conduct of Subhash Chand was even held by Additional Sessions Judge to be natural.

The Additional Sessions Judge also observed that it was natural for Subhash Chand not to intervene in view of the armed persons who were beating Dharam Pal. Despite this evidence these four were given benefit of doubt on the ground of their identity not being established. The High Court very rightly held that on the testimony of PW1 corroborated from other records it stood established that these persons had committed the murder of Dharam Pal. They were found guilty of the charge under Section 302/149 and Section 147 IPC. The dispute about the identity was only a red herring. It was only a smoke screen. Mr. Sushil Kumar submitted that the High Court was under a wrong impression that Mahesh was son of deceased Raja Ram, for the reason that the name of the father of Mahesh was also Raja Ram although it was Raja Ram Vaish and the name of the deceased was Raja Ram Yadav. It does seem that the High Court has wrongly noticed that the Mahesh is the son of deceased Raja Ram. That mistake, however, is of no consequence in the facts and circumstances of the present case. Mahesh was identified by PW1 and PW2. He was responsible for getting the bail of PW1 cancelled. He was the Secretary of Raja Ram. There could be no question of PW1 and PW2 taking some other Mahesh as the Mahesh accused. Enmity between the two groups was admitted and fully established. The doubt that on account of the said enmity PW1 may name these four accused could only mean that the court may, on material aspects, look for corroboration to the testimony of PW1. In the present case the testimony of PW2 also lends credence to the prosecution story. PW2 was also one of the persons to have witnessed the occurrence and was named in the FIR. He has deposed to have seen all the six accused beating Dharam Pal and four having left before arrival of police. Bhanwar and Arjun Singh were found by police on spot. He has also identified all the accused. PW2 having not intervened or shouted was explained by him. He deposed that seeing the incident, he was frightened as earlier Raja Ram had been murdered. The conduct of PW2 was very natural. He was friendly with accused Rakesh and used to visit his house. He did not know any Rakesh other than the accused Rakesh. He also knew Mahesh and Rajbir. It was not suggested that he had seen any other Mahesh or Rajbir. Mr. Sushil Kumar, learned counsel, referring to the testimony of Investigating Officer submitted that despite perusal of case diary he could not mention the parentage of the accused persons in the site plan. It would only show that the parentage of these accused persons was not mentioned in the site plan. In the facts and circumstances of the case that is of no consequence having regard to the testimony of PWs 1 and 2.

The present case is not of mere substitution by High Court of its view for that of the Sessions Court as contended by Mr. Sushil Kumar and Mr. Bhardwaj. Clearly the view of the Sessions Court was perverse. On material on record and in the facts and circumstances of the case it was not a reasonable view to take that identity of the four accused had not been established. We have gone through the evidence. In our view no other reasonable view than what was taken by the High Court was possible. The High Court has for just and cogent reasons reversed the judgment of acquittal passed by the Additional Sessions Judge.

For the aforesaid reasons we find no substance in any of these appeals. All the appeals are accordingly dismissed. The conviction and sentence imposed by the High Court on all the appellants is confirmed. The appellants who are on bail shall be taken into custody forthwith to serve the remaining part of their sentence.

JUDIS