

PETITIONER:
SURENDRA PRATAP CHAUHAN

Vs.

RESPONDENT:
RAM NAIK & ORS.

DATE OF JUDGMENT: 13/11/2000

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

JUDGMENT:

R.C. Lahoti, J.
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Ram Naik, Lalta and Kanta, the three accused-respondents who are real brothers were convicted under Section 302/34 IPC and sentenced to imprisonment for life by the Second Additional Sessions Judge, Jaunpur by judgment dated 17.2.1979. A Division Bench of the Allahabad High Court, by its judgment dated 3.5.1991, allowed the appeal preferred by the accused-respondents and acquitted them of the charges. Surendra Pratap Chauhan, son of the deceased, has preferred this appeal by special leave under Article 136 of the Constitution laying challenge to the acquittal recorded by the High Court.

The deceased Komal Ram, his father Ram Bharose - who is also an eye-witness to the incident and who lodged the FIR also, Zhamman (P.W.2) and Baijnath (P.W.5) - the two eye-witnesses and the three accused-respondent are all residents of village Saravni Purbi Patti, P.S. Kerakal. There was a civil litigation relating to a land dispute going on since 1966 between Ram Bharose (P.W.1) - the father of the deceased Komal Ram and the accused Ram Naik, wherein Ram Bharose had succeeded in the Trial Court. Ram Naik had preferred an appeal in the year 1976 which was to come up for hearing on 19.5.1978. Komal Ram, the deceased, was looking after the litigation on behalf of his father, Ram Bharose. On 19.5.1978 also Komal Ram was scheduled to leave for the city where the appeal was to be heard. Komal Ram was a primary school teacher by profession. At a distance of about 100 yards from the residential house of Ram Bharose is situated his agricultural land which has also a well. Zhamman(P.W.2) and Baijnath(P.W.5) have their houses situated in close vicinity of Ram Bharoses house in the village.

According to the prosecution, sugarcane crop was sown in the agricultural land of Ram Bharose. For two days preceding the date of the incident the crop was being irrigated from the well. For this reason and it being the summer season, Komal Ram used to sleep on a cot by the side of the well while Ram Bharose, Zhamman and Baijnath used to sleep at their respective houses in the village but outside the houses as the villagers do during the summer. At about 3.30 a.m. on the night between 17th & 18th May, Ram Bharose

was awakened by Komal Rams screams. He too raised hue and cry which attracted Zhamman and Baijnath. They started running towards the well. Each one of them had a torch in his hand. They reached near the cot of the deceased Komal Ram. Though it was moon-lit, the trio flashed their torches and saw the three accused persons and an unidentified person standing surrounding Komal Ram. Accused Ram Naik was armed with a gandasa (a butchers heavy knife, also used for chopping fodder-grass). The other two accused and the unidentified person were empty-handed. The three, excepting Ram Naik, had caught hold of Komal Ram keeping him pressed on the cot in the lying position while Ram Naik was rasping Komal Rams throat with gandasa, i.e., using the gandasa like a saw or file. The three accused and the fourth person - all took to their heels having seen Ram Bharose and the two witnesses. Komal Ram was found dead having sustained a severe cut wound on the neck and another injury on the left hand. They returned back to the village. One Shriram Yadav helped Ram Bharose by preparing a written report of the incident which was taken to the police station by Ram Bharose and on its basis FIR (Exhibit P-4) was recorded by Sheikh Faikoo, the constable Mohrrir posted at the police station at 6.10.a.m. An offence under Section 302 IPC was registered and the usual investigation commenced, the details whereof are not very material. Autopsy on the dead body was conducted by Dr. R.P. Rastogi. On completion of investigation the three accused-respondents were charge-sheeted.

On trial, the learned Sessions Judge found the testimony of Ram Bharose(P.W.1), Zhamman(P.W.2) and Baijnath(P.W.5) trustworthy and based conviction of the three accused-respondents thereon. The High Court has found the ocular evidence not worthy of credence and the prosecution story shaky. In the opinion of the High Court it was a blind murder and the accused-respondents have been falsely implicated on account of long pending litigation between the complainant and the accused persons.

We have heard the learned counsel for the appellant and also the learned counsel for the State. Having heard their submissions and having gone through the statements of the several witnesses as also the other material available on record we are of the opinion that the finding of acquittal as arrived at by the High Court is not liable to be interfered with.

As already stated, strained relationship between the three accused-respondents and the complainant Ram Bharose is an admitted fact. Ram Bharose(P.W.1) has also admitted that Zhamman and Baijnath, the two eye-witnesses were his caste fellows. In the civil litigation, Zhamman and Baijnath had appeared as his witnesses against Ram Naik. The litigation had been going on for about 12 years prior to the date of the incident. Ram Naik having lost in the first round of litigation, had preferred an appeal and was prosecuting the same. Apparently, nothing had happened immediately which could have prompted or motivated the three accused-respondents to murder Komal Ram. If there would have been any such apprehension on the part of the deceased or the complainant, the deceased Komal Ram would not have gone to sleep alone near the well. At the same time, merely because the relations between the accused persons and the complainant were strained leading to groupism in the village, the testimony of the eye-witnesses is not to be

discarded though it needs to be scrutinised with caution so as to eliminate the possibility of any false implication.

According to Ram Bharose(P.W.1), he was awakened by the shouts of Komal Ram. He got up and ran towards the well. His own cries awakened Zhamman and Baijnath who also ran towards the well. Each one of the three had a torch in his hands. The torches were flashed when they had reached near the deceased. He saw the accused Lalta holding one arm of the deceased and the unidentified culprit holding another arm of the deceased. According to him the accused Ram Naik was also keeping pressed with his foot one hand of the deceased. The accused Kanta had caught hold of the face of the deceased and was keeping it pressed. According to Ram Bharose one of the culprits had climbed over the legs of the deceased though he was not able to name who he was. Ram Bharose and the two witnesses had reached near the cot of the deceased almost simultaneously. Other villagers also reached there but a little later. During cross-examination, he stated, when he and the witnesses had reached near the cot, the accused persons were already running away and were at a distance of about 15 lathas (one latha being about 5 to 6 feet).

According to Zhamman(P.W.2), he having arose at the cries of Ram Bharose, picked up his torch and followed Ram Bharose, who was running towards the well. From 10 to 12 paces away from the well he saw the accused Ram Naik rasping the throat of Komal Ram with gandasa and three other persons including Lalta and Kanta, accused keeping the deceased Komal Ram pressed on the cot. He had not heard the voice of the deceased Komal Ram but had heard the cries of Ram Bharose only. None had lighted the torches while running towards the well as moon-light had created some visibility. The two witnesses ran after Ram Bharose and had reached near the cot of the deceased. He stated to have seen the accused Ram Naik rasping Komal Rams throat.

Baijnath(P.W.5) states to have been awakened by the cries of Ram Bharose and Komal Ram. He also ran towards the well with a torch in his hands. He could see nothing so long as he was running towards the well. He did not light his torch on the way. According to him neither he nor Ram Bharose nor Zhamman lighted any torch as it was not required on account of twilight visibility being available. He saw the deceased Komal Ram lying on the cot, Kanta and Lalta accused and an unidentified person gripping the deceased keeping him pressed on the cot while Ram Naik was cutting Komals throat with gandasa.

Dr. R.P. Rastogi who conducted the post-mortem examination of deceased Komal Ram at 3.45 p.m. on 18.5.1978 found an incised wound 22 cm x 3½ cm x ½ cm on the neck of the deceased. The neck was joined with skin on the back side and right side. The incised wound was behind the neck going to the right from the left, about 5 cm below the right ear. The thyroid cartilage was cut parallel to chin on the level of 4th vertebra of the neck. The bone was entirely cut. The borders of the wound were clean cut and multiple tags of skin were present. There was yet another incised wound 17 cm x 3 ¼ cm x bone deep extending from behind forearm to the back of the palm of the left hand between little and ring fingers. The 4th metacarpal bone and left radius bone were cut. The borders of the wound were clean cut. The cause of the death was shock and haemorrhage due

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to the neck injury. The death was likely to have taken place at 3.30 a.m. The injury was sufficient in the ordinary course of nature to cause death. Both the injuries could have been caused by a weapon like gadasa. During cross-examination, Dr. Rastogi stated that the neck injury seemed to have resulted not by one blow but by several blows. He stated that if a sharp weapon was rasped at one place then tags would not be left at the rasped place and the wound would be clean cut. In answer to a Court question, Dr. Rastogi stated that if the neck be cut by one blow then due to the force of the same becoming light on being inflicted the upper surface would be clean cut and the tags would remain at the other end.

The weapon of the offence was not recovered.

The nature of the injury on the neck, as described by Dr. Rastogi, renders it highly probable that heavy blow or blows, one or two, were dealt with by sharp cutting heavy weapon, may be a gadasa, resulting into instantaneous death of the deceased. By the same or a similar weapon the deceased sustained an injury on the hand also. The medical evidence does not suggest the neck of the deceased having been rasped, i.e., by using like a saw, a weapon like gadasa.

The story as narrated by Ram Bharose, Zhamman and Baijnath does not fit in with the medical evidence. The three witnesses state Ram Naik rasping the neck of the deceased while two co-accused and one unidentified person were leaning over the victim catching hold of or pressing the hands, legs and face of the deceased. The story of rasping the neck appears to have been introduced by the witnesses with dual purpose. Firstly, rasping the neck would take time and enable the witnesses to identify the assailants. Secondly, the act of rasping the neck would certainly be resisted by the victim who would not remain stationary and therefore the two co-accused and an unidentified person can be introduced in the incriminating story playing the part of holding the victim tied to the cot. None of the witnesses explains how the victim sustained the injury on the hand. Each one of the three eye-witnesses states to be sleeping with a torch by his side. Each of the witnesses brought his torch in the Court on the date of his examination and showed the torch to the Court. Each of the torches is a three-cell torch, i.e., a powerful one. Ordinarily, people in the village do not sleep accompanied by torches unless it is customary in the village to do so! There is contradiction in the testimony of Ram Bharose and Baijnath whether the torches were lighted or not. Ram Bharose and Zhamman have contradicted each other on the point at which the torches were flashed — while running towards the well or when the witnesses had reached near the cot of the deceased. It was just moonlight even if the moon was there in the sky. If the witnesses had torches in their hands and they were running towards the well on the village path or through the fields the natural impulse would be to flash the torches so as to make the path visible and also to attempt to have a view of the place of the incident wherefrom the cries had emanated. If the torches were lighted, the assailants would not keep on standing but would rather take to their heels in which case they would not have been identified. The High Court is right in observing that the case appears to be one of blind murder and false implication of the accused persons who are

three real brothers so as to avenge the enmity generated by the land dispute.

Ordinarily, Ram Bharose would have rushed to the police station and narrated the incident orally to the constable Mohrrir for the purpose of recording the FIR. However, a written report prepared by Shriram Yadav was taken to the police station. It is surprising that the written report carried by Ram Bharose and delivered at the police station has not been exhibited. Shriram Yadav, the scribe of the report, has also not been examined. According to Shiekh Faikoo(P.W.6) there was only one FIR, the one in question, lodged at the P.S. on that day. The General Diary in which the FIR was recorded was thus open and so available for the whole day. No record has been produced to show when the copy of the FIR was despatched to the jurisdiction Magistrate in compliance with S.157 Cr.P.C.. We are not recording any finding that the FIR in the case was made belatedly and then ante-timed; we are only pointing out at a few likely holes left unplucked by the prosecution and hence perceptible in the facts and circumstances of the case at hand.

The High Court has on an evaluation of the evidence found the ocular evidence untrustworthy and discarded the prosecution version of the incident in so far as it relates to the accused-respondents. We too are not inclined to take a different view. The unnaturality of the story attributing collective role to four assailants apparently with a view to embroil as many, higher probability of the assailants being not available by the side of victim improbably their identification, more likelihood of the incident being a hit-and-run crime as reflected by medical testimony, coupled with other infirmities in the prosecution case evaluated in the light of strained relations between the parties anterior to the incident persuade us not to interfere with the finding recorded by the High Court. The acquittal of the accused-respondents has to be sustained.

The appeal is dismissed. The judgment of the High Court acquitting the accused-respondents is maintained. The accused-respondents are on bail. The bail bonds are discharged.