

CASE NO.:
Appeal (crl.) 65-66 of 1995

PETITIONER:
State of U.P.

RESPONDENT:
Man Singh & Ors.

DATE OF JUDGMENT: 24/10/2002

BENCH:
SHIVRAJ V. PATIL & ARUN KUMAR..

JUDGMENT:
J U D G M E N T

ARUN KUMAR, J.

These appeals are directed against a Division Bench judgment dated 9.1.1992 of the Allahabad High Court allowing the appeals against the judgment of conviction passed by the IVth Additional Sessions judge, Mainpuri, Uttar Pradesh. The High Court acquitted all the four accused who had been found guilty by the trial Court. As a matter of fact the trial Court convicted six accused. All of them had appealed to the High Court. During the pendency of the appeals, two accused viz., Raj Nath and Mansa Ram died and the remaining four accused were acquitted by the High Court. Hence, these appeals by the State against the judgment of acquittal passed by the High Court.

Briefly, the facts are that on the morning of 6th January, 1978 immediately after sunrise i.e. at about 7.00 a.m. Raja Ram left his house for his fields to start the diesel engine of his pumping set in order to irrigate his field. He required help of at least three others for the purpose of starting the engine. He called his brother Kishan Lal to follow him alongwith two other persons so that the engine could be started. It has come in evidence that starting the diesel engine during the winter month of January requires quite an effort. Daya Ram (P.W.1), Kishan Lal (P.W.2) and Dev Dutt followed Raja Ram. They were about 15-20 paces behind Raja Ram. As Raja Ram was proceeding towards his field he passed by two "Noonars" (Tilas). As per the prosecution case seven accused persons viz., Sadho Singh (who died during trial) alongwith Dhyani Singh, Man Singh, Mansa Ram, Raj Nath, Ram Naresh and Ram Saneshi suddenly emerged from behind the Noonars (tillas i.e. big mounds of earth). They were all armed with weapons; three had country made pistols while the others had guns with them. Dhyani Singh accused exhorted his companions "Sathiyo Raja Ram Sala aaj nekal na pai". Raja Ram who was some paces ahead of the accused took to heels. The accused gave him a chase and started firing shots at him with their fire-arms. Raja Ram on receiving gun shots fell down in the field of one Balwant. When the accused persons reached near the body of Raja Ram, they fired some shots in the air and some at Raja Ram. They also shouted "Bara Bahadur banta tha, aaj mar paya hai." The field of Balwant was by the side of a river which had knee deep water. The accused dragged the body of the Raja Ram to the river. The body of the deceased was tied with a rope and "tahmad" and was dragged into the river where river was deep. The body of Raja Ram was thrown into the river. Before throwing the body into the river, the accused had severed the head of Raja Ram from the body.

Thereafter all the accused went away.

Daya Ram (P.W.1), Kishan Lal (P.W.2) and Dev Dutt were stealthily following the accused. On the basis of the trail of blood they reached the place wherefrom the tied body of Raja Ram was thrown into the river. They took out the headless body of Raja Ram from the river. Raja Ram had his name tattooed over his hand which had been erased. Daya Ram and Dev Dutt stayed there to keep a watch over the dead body while Kishan Lal left for Police Station, Alau to make a report. Kishan Lal lodged the F.I.R. at the Police Station, and thereafter returned to the place where the dead body was lying.

The motive behind the murder is alleged to be that accused Sadho Singh (since deceased) and Dhyani Singh alongwith others were being prosecuted in a case under Section 307 I.P.C. in respect of an assault on one Ram Prakash. Daya Ram (P.W.1) in the present case was the prosecution witness in the said case. About a month prior to the incident of murder of Raja Ram, all the accused of the present case had gone to the house of Daya Ram where in the presence of Raja Ram (deceased), Kishan Lal and Dev Dutt, they asked Daya Ram not to be a witness in the case under Section 307 IPC and asked him to file an affidavit that no such incident took place in his presence. Daya Ram repelled the suggestion and replied in the negative. Raja Ram (deceased) uttered "Hum Thok Kar Gavahi dilwayengai". The accused persons then went away holding out a threat to Raja Ram.

Besides examining the two eye-witnesses viz., Daya Ram (P.W.1) and Kishan Lal (P.W.2), the prosecution examined Dr. Devendra Prasad Misra (P.W.3) who had conducted post-mortem examination on the body of the deceased on 8th January, 1978. The remaining witnesses examined by the prosecution were the official witnesses. The Doctor opined that the death took place two days prior to the examination. He gave details of various ante-mortem and post mortem injuries found on the body of the deceased. Apart from other details he deposed that the head and neck were missing from the body and an abrasion 6" x 4" cms was found on right arm front middle. According to the doctor the death was due to shock and haemorrhage on account of ante-mortem injuries.

Daya Ram (P.W.1) and Kishan Lal (P.W. 2) are the eye-witnesses of the incident. They were persons who were following Raja Ram along with one Dev Dutt in order to help Raja Ram to start the diesel engine attached to the pump-set for purposes of irrigating the fields. The two eye-witnesses gave details of the incident as they were following Raja Ram (deceased) 15-20 paces behind him. According to the eye-witnesses they had seen all the accused suddenly emerging from behind the "Noonars" (Tilas) armed with weapons, who started chasing Raja Ram firing gun shots at him due to which he fell down in the field of one Balwant wherefrom the body of Raja Ram was dragged by the accused to the river. Before throwing the dead body into the river, the accused had severed the head from the body and tied the body with rope and "tahmad". After throwing the body into the river, the accused went away. The two eye-witnesses alongwith Dev Dutt thereafter took the dead body of Raja Ram out of the river. Kishan Lal (P.W.2) went to the Police Station to file FIR while the other two stayed back to keep a watch on the dead body. After lodging the FIR, the investigation started.

The accused persons were charged with offences under Sections 148, 302/149 and 201 IPC. The accused persons pleaded not guilty. The trial took place. None of the accused examined any witness in defence. The trial Court after examining the entire evidence on record, by a well considered judgment, came to the conclusion that all the accused persons were guilty of the offences they were charged with. It convicted all of them of the offences they

were charged with. Each of them was sentenced to two years' rigorous imprisonment for offence under Section 148 IPC and four years' rigorous imprisonment for offence under Section 201 IPC. For the offence under Section 302 read with 149 IPC each of them was sentenced to life imprisonment. The sentences were to run concurrently.

All the six accused persons appealed to the High Court. The High Court allowed the appeals and acquitted all of them. The High Court has noticed in its judgment that all the accused persons were on bail, they were ordered to be set free.

After reciting the facts of the case and after noting the arguments advanced by the counsel for the appellants, the High Court had only this to say :

"We considered seriously over the plea of the appellants. Keeping in view all the circumstances the presence of both the alleged eyewitnesses at the time of incident is appearing doubtful to us on a/c of which their evidence cannot be relied upon beyond reasonable doubt.

In our opinion the prosecution has not succeeded in proving its case against the appellants beyond reasonable doubt due to which their conviction cannot be uphold."

Strangely in a murder case involving seven accused persons, all having been convicted by the trial court, this is the only contribution of the High Court. From the observations of the High Court, it is clear that the High Court did not accept the evidence of the eye-witnesses. The very presence of the eye-witnesses at the time of occurrence was considered doubtful by the High Court. This doubt which appears to have entered the mind of the High Court is based on the argument advanced on behalf of the accused persons that there was fog at the time of occurrence and due to fog the eye-witnesses who were said to be at a distance from the deceased could not have seen what was actually happening.

In our view, this factor which seems to have prevailed with the High Court in acquitting the accused persons was totally extraneous, being based on conjectures. It is rather contrary to the evidence on record. Therefore, in our view, the decision of the High Court cannot be sustained. The theory of fog was introduced before the High Court for the first time. It is not based on any evidence. In any case the said theory could not be introduced because the presence of fog leading to the vision of the eye-witnesses being blurred was never put to the eye-witnesses. The eye-witnesses were never asked in the cross-examination as to whether there was fog at the time of the incident, and if so, did it obstruct the eye-witnesses from watching the occurrence. When this aspect was never put to the witnesses, it cannot be said on the basis of mere imagination that the vision of the witnesses was obstructed by fog and they could not have seen the occurrence. The High Court completely erred in accepting this and doubting the version of eye-witnesses for this reason alone. The basic fact about the presence of fog leading to blurring the vision of the eye-witnesses without being put to witness during their cross-examination could not have been taken into consideration. It was the witnesses who were in best position to say whether there was fog at the relevant time or not and whether the fog, if present, was enough to prevent the eye-witnesses from watching the scene of occurrence. The High Court was not justified in basing its decision on the theory of presence of fog. On the other hand it is to be seen that both the

eye witnesses gave detailed account of the incident. There is hardly any discrepancy in the version of the incident given by the two witnesses. Without actually witnessing the incident the witnesses could not have given such details of the occurrence. In our view the eye witness account of the occurrence inspires confidence and there is no reason to cast any doubt on the same. It is a case of brutal murder of a person by a gang of seven persons. The details of the murder available on record in the shape of eye witness account of the incident, medical evidence, mutilated body of the accused with neck and head severed, leave no doubt about the involvement of the accused-respondents in the crime.

The High Court failed to appreciate that the dead body of Raja Ram was taken out from the river by Daya Ram, Kishan Lal and Dev Dutt almost immediately after the accused persons had left the scene after throwing the dead body into the river. The immediate recovery of the dead body by these persons completely establishes their presence at the scene of occurrence and the fact that they had witnessed the entire incident. When the dead body was immersed in water and was lying in the river bed, it would have been impossible to take it out immediately unless the persons who took out the dead body had seen the dead body being thrown into the river. The instantaneous recovery of the dead body of Raja Ram from the river by the eye-witnesses, including Dev Dutt shows that they had seen the spot where the dead body had been thrown into the river and for that reasons alone, they could have it out, otherwise locating the dead body in the river bed would have been quite an effort and time consuming. This aspect completely establishes the presence of the eye-witnesses on the scene of occurrence and the fact that they had seen the occurrence.

Another important fact to be kept in view is that the accused persons were seven in number and they were all armed with guns and pistols whereas the three viz., Daya Ram, Kishan Lal and Dev Dutt, belonging to the victims party, were totally unarmed. This was the reason that they had to conceal themselves and they could not come out in the open before the accused persons in order to make any effort to save the deceased. Coming out in the open would have been fatal. The conduct of these three was quite natural. Normally nobody would venture or have the courage to go near the accused persons who were armed with fire-arms and who were firing gun shots at their target. If any one would have tried, he would have met the same fate. They must have been anxious to take the dead body of the deceased with them and for that reason they hid themselves in the Arhar fields and remained there till the accused left the place of occurrence to take out the dead body. The trial court after closely examining the evidence of Daya Ram (P.W.1) and Kishan Lal (P.W.2) noted that both were consistent in their version of the occurrence and there was no material discrepancy in their statements. It found that evidence of the two eye-witnesses was genuine.

For all these reasons we are unable to sustain the judgment of the High Court which is under appeal. Accordingly the same is set aside. The judgment of the trial Court is upheld. We uphold the conviction of the accused persons and the sentence imposed on them by the trial court. We are informed that out of the six accused persons, two died during the pendency of appeal before the High Court, the remaining accused persons be taken in custody to undergo the sentence as awarded by the trial Court.

The appeals are allowed accordingly.