

CASE NO.:
Appeal (crl.) 207 of 1993

PETITIONER:
ARJUN AND ORS.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 14/07/1994

BENCH:
DR. A.S. ANAND & FAIZAN UDDIN

JUDGMENT:
JUDGMENT

1994 SUPPL.(1) SCR 616

The Judgment of the Court was delivered by

FAIZAN UDDIN, J. 1. This appeal by special leave of this Court has been directed against the judgment of the High Court of Rajasthan passed in Criminal Appeal No. 285/90 affirming the conviction of the four appellants for an offence under Section 302, I.P.C. by the Additional Sessions Judge, Deeg in Sessions Case No. 8/89; imposing sentence of life imprisonment on all the four appellants (herein).

2. The four appellants, namely, Arjun, Rampal, Bhagwan Singh and Mukhoram were charged and tried alongwith four other acquitted accused, namely, Nathu, Pannalal, Damodar Lal and Badely under Sections 302 and 148 read with Section 149 of the I.P.C.

3. The prosecution case was that on 27.11.88 at about 11 AM when the deceased Jyoti Ram followed by his brother Bohari PW 1, was going from his village Baroli Dhau to an adjoining village Pasopa to purchase water pipe, he was way laid and surrounded by the appellants and four other co-accused who emerged from mustard field. The appellants Bhagawan Sahai, Rampal and Arjun were armed with Farsas and the appellant Mukho Ram was armed with Ballam while the rest of the four acquitted accused are said to be armed with lathies. It is said that the appellant Arjun exhorted the other accused persons to kill Jyoti Ram then all assaulted Jyoti Ram with the weapons they were armed with. When the assault was opened on Jyoti Ram he raised hue and cry inviting the attention of Purañ, PW 3 who was present in the nearby field and Bhagawan Sahai, PW 2, Harish Chandra, PW 4, Sat Pal Singh, PW 7 who had just come out of the Panchayat Bhavan after the meeting. They all rushed to the place of occurrence to rescue Jyoti Ram. The appellant and the other four acquitted accused on seeing the villagers and witnesses approaching the place of occurrence made their escape good.

4. A written report Ext. P8 was lodged same day at about 12.40 PM by Sat Pal Singh, PW 7, the son of the victim in the Police Station, Kama about 13 km. away from the place of occurrence on the basis of which First Information Report Ext. P9 was recorded by Rup Narayan, PW 11, the Station House Officer, Kama.

5. The victim Jyoti Ram died on the way while he was being taken in the tractor of Ram Dhan, PW 6 to Kama hospital. The police also arrived in the hospital alongwith the informant, Sat Pal, PW 7. In the hospital inquest report, Ext.2 was prepared. The bloodstained clothes of the deceased Jyoti Ram were seized by the police by seizure memo Ext. P7. Simple and blood stained earth was also seized from the place of occurrence as per seizure memo Ext. P5.

6. Dr. Mangal Ram, PW 8 performed an autopsy over the dead body of Jyoti Ram in Government Hospital, Kama on 27.11.88 itself at 4 PM. As per post-mortem report Ext. P.17 Dr. Mangal Ram found the following injuries on the person of the deceased :

- (1) Incised wound 4"x 1"x Bone deep on right parietal region.
- (2) incised wound 3"x 1"x Bone deep on left parietal region.
- (3) Oediamation - Ecling mossis over right eye diffused area.
- (4) Incised wound 1"x 1/2"x 1/4" on middle part of the right ear. The afore-mentioned injuries were caused by sharp weapon.
- (5) Stab wounds five in number - all on the right side of the face, near right side of the face, near .ear.. All these stab wound in the opinion of the doctor were caused by sharp weapon and may be inflicted by lance (Ballam).
- (6) Stab wound 1/2" x 1/2" x 1" at right side of occipital region behind the right ear caused by sharp weapon.
- (7) Abrasion 1" x 1/2" at right shoulder.
- (8) Lacerated wound with fracture of 5th wetacarpal bone right hand.

7. Injuries No. 7 and 8 described above were caused by blunt weapon. The doctor also found congestion in the scalp and skull bones. Membrane was ruptured both over left and right parietal area and right temporal area was also ruptured. He also found brain hammeorhage. In the opinion of Doctor Mangal Singh Injury No. 1 and 2 independently was sufficient to cause death in the ordinary course of nature and the cause of death was due to brain hammeorhage and shock.

8. The accused Damodar and Panna took the plea of alibi and stated that on the relevant date and time both of them were at Delhi and that they were falsely implicated. The remaining accused also adjured their guilt and pleaded false implication due to enmity. The learned Trial Judge after analysing the prosecution evidence on record found that there were some exaggeration in the prosecution evidence with regard to the accused Damodar and Panna as compared to their statements recorded under Section 161 Cr. P.C. and, therefore, giving the benefit of doubt recorded their acquittal. The Trial Judge gave the benefit of doubt to the other two co-accused, namely, Nathu and Badley and, therefore, acquitted them also. The Trial Court found no case against any of the appellants under Section 148. However, learned Trial Judge on evaluation of the prosecution evidence found it to be reliable and consistent so far as the four appellants before us are concerned and, therefore, held them guilty under Section 302 of the Penal Code for murder of Jyoti Ram and sentenced to each one of them to undergo life imprisonment. The said conviction and sentence has been further affirmed by the High Court of Rajasthan, Jaipur Bench against which this appeal by grant of special leave has been preferred,

9. 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 close 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 com-plainant and the appellants were on enemical 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 the 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 enemical 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 enemical 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 scrutinize the evidence with more than ordinary care which precaution has already been taken by the two courts below while analysing and accepting the evidence.

10. Learned counsel for the appellants next submitted that Bahori, PW 1 was taking his meals when the deceased Jyoti Ram had already left for village Pasopa and, therefore, he could not have seen the occurrence which took place at the outskirts of the village. He reached the place of occurrence only after the incident was over. As regard the other prosecution witnesses, namely, Bhagwan Sahai, PW 2, Harish Chandra, PW 4 and Sat Pal Singh, PW 7 it was submitted that they could not have seen the occurrence as they were busy in Panchayat meeting inside Panchayat Bhawan as deposed by defence witnesses, Kishan Singh, DW 1 and Kishore Kumar Sharma, DW 2 who were also present in the said meeting which continued upto 12 noon while the incident is said to have occurred at about 11 AM. Regarding the other eye-witness PW 3 it was argued that he is only a chance witness and on these premises it was vehemently urged that the two Courts below committed an error in placing reliance on their testimony. But on a close scrutiny and analysis of the evidence of all the witnesses referred to above we find that the arguments are without any merit.

11. Bahori, PW 1 the brother of the deceased Jyoti clearly deposed that Jyoti came to his house while he was taking meals and told to accompany him to village Pasopa where he was going to purchase pipe and, therefore, he after taking his meals followed his brother. His brother Jyoti was going about 40*50 ft. ahead of him. He further stated that the four appellants as well as the four acquitted accused were hiding in a mustard field and all emerged and surrounded Jyoti as soon as he reached near the field. On exhortation by the appellant Arjun, an assault was opened on the deceased. Arjun attacked Jyoti with pick-axe on the right side of hand, the appellant Ram Pal also gave blow on the left side of the head by the pick-axe and thereafter the appellant Mukho gave lance blow on the back of Jyoti's head and when Jyoti fell down the appellant Bhagwan Sahai attacked Jyoti with pick-axe on right side of his cheek. Appellant Mukho also gave lance blows on the right cheek and the acquitted accused persons assaulted him by lathies. He goes on to state that on receiving the assaults there was an uproar as Jyoti raised hue and cry attracting Bhagwan Sahai, PW 3, Harish Chandra, PW 4 and Sat Pal Singh, PW 7 who arrived at the place of occurrence whereafter the appellants made their escape good towards the village Jhajhul. According to the evidence of Bhagwan Sahai, PW 2, Harish Chandra, PW 4 and Sat Pal, PW 7 they all had gone in a meeting of Young Union Association held at 10.30 AM in Panchayat Bhawan of the Village where oath ceremony of the new members of the Association had taken place on 27.11.88 and as soon as the meeting was over at about 11 AM they came out of Panchayat Bhawan. As soon as they came out from Panchayat Bhawan, they heard uproar and cries of deceased Jyoti and Bahori, PW 1 from the out-skirt of the village. These three witnesses, therefore, rushed towards the place of occurrence at a distance of about 300 ft. away from the Panchayat Bhawan. At the out-skirt of village Pasopa they saw from a close range the present four appellants armed with pick axes, lance and acquitted accused

armed with lathies. All the three witnesses have fully corroborated the statement of Bahori, PW 1, with regard to the weapons they were armed with and the individual assaults made by the appellants on the deceased. Their statement is fully consistent and nothing could be elicited from them so as to doubt their testimony. Minor omissions and contradictions which have been brought about in their evidence relate only to the details of assault alleged to have been made by the four acquitted accused. The, four accused have already been given benefit of doubt and acquitted of the offence charged with by the learned Trial Judge and upheld by the High Court. The presence of these three witnesses at the Panchayat Bhawan since 10.30 AM on 27.11.88 has been admitted even by the defence witnesses.

12. According to the evidence of Puran, PW 3 he had taken the land of one Pt. Ram Saroop situated near out-skirt of the village, and had cultivated the same himself. He deposed that on the date and time of the occurrence when he was in his field he heard the uproar and cries of deceased Jyoti and Bahori, PW 1 and when he rushed towards the cries near his field he saw that the witnesses Bhagwan Sahai, PW 2, Harish Chandra, PW 4 and Sat Pal, PW 7 were also running towards the place of occurrence. He saw that the deceased was surrounded by the four appellants as well as the four acquitted accused. The appellant Arjun, Ram Pal and Bhagwan Sahai were armed with pick-axes while 4th appellant Mukho was armed with a lance and the acquitted accused were having lathies According to Puran PW 3, the appellant Arjun first gave a pick-axe blow on the right side of Jyoti's head, appellant Ram Pal attacked on the right side of the head, Mukho gave a blow with lance at the back side of the head as result of which Jyoti fell on the ground. Thereafter the appellant Bhagwan Sahai gave blows of pick-axe on his right cheek and the appellant Mukho also gave lance blow on his right cheek. Puran is totally an independent witness. His presence in the field near the place of occurrence was quite natural as according to him the crop was standing in the field cultivated by him. The evidence of these eye-witnesses, PW 1, PW 2, PW 3, PW 4 and PW 7 further finds corroboration from the medical evidence of Dr. Mangal, PW 8 as already discussed earlier. The injuries found on the person of the deceased tally with the ocular version of all these eye witnesses which further lend assurance and support to the prosecution case. In view of these facts and circumstances we find no reason whatsoever to differ from the concurrent view taken by the two Courts below as the evidence on the basis of which the conviction of these four appellants is founded is fully reliable and trust-worthy and hence no other view is possible than the one already taken by the Trial Court and the High Court. Normally Supreme Court does not appraise the evidence for itself under Article 136 of the Constitution. The conclusion of High Court on question of fact on appreciation of evidence is considered to be final, yet we have scrutinised the evidence to satisfy ourselves to see whether there is any infirmity in the conclusions recorded by the High Court and we find that there is no cause for any interference.

13. As regards the defence evidence we find that both Kishan Singh DW 1 and Kishore Kumar Sharma, DW 2 are false witnesses and did not make a truthful statement of the incident. Kishan Singh, DW 1 at the relevant time was the secretary of the Young Group Association of the village. He deposed that the first meeting was held on 21.11.88 when oath was given to some of its members but the members Bhagwan Sahai, PW 2 and Harish Chandra, PW 4 were not present in that meeting. He admitted that Sat Pal PW 7, was the Vice-President of the Association. He further stated that second meeting was held on 27.11.88, the day of occurrence in the Panchayat Bhawan in which the new members Bhagwan Sahai, PW 2, Harish Chandra, PW 4 and others were present. According to him the meeting commenced at 10.30 and continued till 12 noon during which period the new members had taken oath while according to the prosecution witness the meeting had ended at 11 AM. Kishan Singh, DW 1 deposed that after the meeting was over there was no uproar nor any hue and cry of Jyoti Ram was heard. According to him no incident at all as alleged by the prosecution occurred on the date and time alleged by the prosecution. He produced the Meeting Register, Ext. D6 in which the time of commencement of the meeting is recorded as 10.30 which ended at 12 noon.

Similar is the statement of Kishore Kumar Sharma, DW 2 who was the President of the said Association. Their evidence is totally falsified by the overwhelming evidence discussed by us earlier. The time of commencement of the meeting mentioned in the register has also been found to be fabricated by the trial Court as no mention of the time is made in respect of any other meetings in the said register. Even otherwise the evidence of these two witnesses appears to be wholly untruthful because according to these two-defence witnesses oath had to be offered only to three-four new members which would not have consumed time right from 10.30 to 12 noon. In any case the meetings must have ended within 10 to 15 minutes and in any case before 11 AM. But these two witnesses even go to the extent of denying the happening of the incident altogether. Having regard to all these facts and circumstances we reject the submissions made by the learned counsel for the appellants challenging the credibility of the prosecution witnesses.

14. Learned counsel for the appellants lastly urged that since the same eye-witnesses have been disbelieved with regard to the participation of the four acquitted accused and, therefore, their evidence should not be accepted to convict the present four appellants also. In this connection it may be noticed that the four acquitted accused were given benefit of doubt with regard to their participation in the incident on the ground that both in the F.I.R. Ext. P8 and in their police statement made under Section 161, Cr.P.C. no disclosure about the actual beating by the four acquitted accused was made by the prosecution witnesses. That being so, in our opinion, the Trial Court as well as the High Court were justified in giving the benefit of doubt to the four acquitted accused. But it does not mean that the consistent evidence of the Five eye-witnesses is liable to be rejected merely on the ground that their evidence has not been accepted with regard to the four acquitted accused. It is well settled that *maxim falsus in uno, falsus in omnibus*, that is to say, false in one thing, false in everything is neither a sound rule of law nor a rule of practice. In such a circumstance the court has to analyse the prosecution evidence carefully and on such analysis if the evidence is found to be consistent and reliable the Court can accept the same with regard to the other accused persons and hold them guilty, even though the Court is unable to rely fully on the prosecution evidence with regard to some of the accused persons. In the present case as we have seen either the two Courts below have examined the evidence of the five eye-witnesses very closely and having found their statement wholly consistent with regard to the participation and assault made by the four appellants on the deceased resulting into his death, have accepted the same to be fully truthful. We too have minutely examined the said evidence and find ourselves in agreement with the view taken by the Courts below.

15. There being no cause for any interference the appeal deserves to be dismissed. In the result the appeal fails and is dismissed.