

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.677 OF 2006

STATE OF U.P.

... APPELLANT

VERSUS

RAJESHWAR & ORS.

... RESPONDENTS

JUDGMENT**Aftab Alam,J.**

1. This appeal by special leave, at the instance of the State of Uttar Pradesh is directed against the judgment and order dated December 21, 2001 passed by the Allahabad High Court in a batch of criminal appeals. By the impugned judgment the High Court allowed all the appeals (that had come to it from a common judgment and order passed by the trial court) and acquitted all the 14 accused (respondents in the present appeal) all of whom were found guilty of rioting and arson and committing murder of three people by the trial court and 8 of whom were awarded the death penalty while the remaining 6 were given the punishment of life imprisonment.

2. The case of the prosecution is based on the oral statement made by one Brij Pal Singh (PW.1) at Kayamganj police station before the Inspector In-charge of that police station. Brij Pal Singh stated that he was a resident of Mauza Ballu Baheta, police station Kayamganj and there was old enmity and litigations between the Harijans and the Brahmins living in his village. On account of the enmity, the accused, namely, Rajeshwar (accused no.1), Ramveer (accused no.2), Rajveer (accused no.3), Patiram @ Patanga (accused no.4), Rajesh @ Tillu (accused no.5), Omveer (accused no.6), Ved Ram (accused no.7), Ram Sevak (accused no.8), Ram Sanahi (accused no.9), Ram Baran (accused no.10), Dayashankar (accused no.11), Radhey (accused no.12), Ram Prakash (accused no.13) and Ramua Jatav (accused no.14) along with four-five unknown accused (whom he could identify by face), armed with country made guns, rifles and *kattas*, came and surrounded their *mohalla*. The accused threatened that anybody trying to run away would not be spared. They then set fire to the informant's *Chhappar* and *Baithak* and the houses of Rambir Garadia, Nek Ram, Awadhesh Nai and also the house of Gangadeen. When the informant and the other victims of the assault tried to run away to save their lives, the accused caught the informant's son Manju @ Manoj and Ram Chandra Nai and assaulted them by *lathis*. They shot Manju near the house of

Awadhesh Nai and threw him in the house that had been set ablaze by them. The informant's brother Amar Singh ran towards Sadhu's hut to save his life. But he was shot and killed there. The accused caught and took Ram Chander Nai towards south in the direction of the house of the sweeper and shot and killed him there. As a result of the indiscriminate firing made by the accused, one Bhura of the informant's village got pellet injuries. The entire village was shocked. They beat up children and ladies. Huge loss was caused due to the burning of the houses. Besides the informant's house, the accused also burnt the houses of their neighbours, the Nais, and the Telees because they used to sit with the informant and his people. The informant was somehow able to save his life and came to the police station to report the offences committed by the accused. He further said that the occurrence was seen by Jagbir son of Amar Singh (PW.3), Ashok son of the deceased Ram Chander (PW.2), Smt. Mahadevi wife of the deceased Ram Chander (not examined), and a number of others who, though named in the FIR, were not examined as prosecution witnesses. He concluded by saying that after committing the offences, the accused had fled away towards Ganga's Katri.

3. The statement of Brij Pal Singh was reduced to writing and was incorporated in the formal FIR on the basis of which the police took up

investigation. On completion of investigation, the police submitted charge-sheet against all the accused named in the FIR besides three other persons, namely, Kunwar Pal, Rajender and Ram Lal.

4. The respondents- accused did not deny the occurrence but took the plea that they had no connection with it. According to the accused, it was a case of dacoity taking place in the dark hours of the night by unknown culprits and they were falsely implicated in the case on account of previous enmity.

5. All the accused named in the charge-sheet were put on trial. The 14 accused named in the FIR were charged under sections 148, 302/149, 307/149 and 436/149. The other three accused who were not named in the FIR were charged for the same substantive offences read with section 120B of the Penal Code. At the conclusion of the trial, the trial court found and held that the prosecution was not able to establish charges against the three accused who were not named in the FIR. It, accordingly, acquitted them. But the rest of the 14 accused (the respondents in this appeal) were held guilty of the offences of which they were charged and were convicted under sections 148, 302/149, 307/149 and 435/149. Having been found guilty of rioting, arson and commission of murder, Rajeshwar, Ramveer, Rajveer, Omveer, Ram Sewak, Daya Shankar, Ram Prakash @ Lojhadi and Radhey were sentenced to death.

The other six accused were given the punishment of life imprisonment. All the accused were fined a sum of Rs.10,000/- each with the default sentence of two years imprisonment.

6. On appeal by the accused, as noted above, the High Court by judgment and order dated December 21, 2001 set aside the judgment of the trial court and acquitted all the accused.

7. It is noted above that occurrence and the manner in which the three persons on the prosecution side were killed are not in dispute. Hence, the only question that requires consideration by the Court is in regard to the identification of the respondents as the accused.

8. Before proceeding further, it would be useful to take note of certain special features of this case. Old and bitter enmity between the two sides is admitted by the prosecution. As a matter of fact, that is said to be the cause behind the attack on the members of the prosecution party. From the depositions of the prosecution witnesses it also comes to light that there have been a number of killings on both sides.

9. The other relevant fact to be taken note of is that Rajeshwar (accused 1), Ramveer (accused 2), Rajbir (accused 3), Patiram @ Patanga (accused 4),

Rajesh @ Tillo (accused 5) are all full brothers. Omveer (accused 6) and Vedram (accused 7) are full brothers. Ramsevak (accused 8) and Ram Sanehi (accused 9) are full brothers. Ram Baran (accused 10) and Dayashankar (accused 11) are full brothers. Ram Prakash @ Lojhadi (accused 12) and Radhey (accused 17) are full brothers. Further, of the 3 acquitted accused, Kunwar Pal and Rajendra were full brothers. Thus, there appears to be a propensity to implicate the members of the same family.

10. Thirdly, though all the accused are named in the FIR and also in the depositions of the prosecution witnesses, the witnesses appear to be careful not to attribute any specific role or any specific weapon to any of the accused and all the fourteen accused are mentioned in an ominous way.

11. These are the facts and circumstances that seem to have weighed with the High Court in appreciating the prosecution evidence and taking the view that the prosecution witnesses do not appear natural and do not inspire confidence.

12. The prosecution examined five eye witnesses in support of its case. Brij Pal Singh (PW.1) is the Informant. He is the father of Manju @ Manoj and brother of Amar Singh, two of the three persons killed in the occurrence. In the examination-in-chief he fully supported the prosecution case and named all the fourteen respondents as the accused. The High Court, however, points out that

he did not assign any role or attribute any weapon to any of the fourteen accused. In cross-examination he stated that he saw his son, Manju, being caught by the accused and being taken towards west. He was taken near the house of Awadhesh Nai where he was assaulted with a lathi as a result of which he fell down and then he was shot. He followed his son as he was caught by the accused and was being taken towards the house of Awadhesh Nai and he saw him being shot from a distance of about 2-3 steps.

13. The High Court points out that though claiming to be a witness of his son being shot from such close distance, he evaded the question as to who were the actual accused who had caught him, assaulted him with lathi or shot at him. Further, in his statement before the police he had said that as the accused set fire to his *chappar* he fled away in a certain direction. From the site plan prepared by the Investigating Officer it appeared that from the direction in which PW.1 had ran away it wouldn't be possible to see the spot where Manju was allegedly shot. PW.1, of course, denied having made any such statement before the Investigating Officer, but the I.O. confirmed that he had said so in his statement under section 161 of the Code of Criminal Procedure.

14. Ashok Kumar (PW.2) is the son of Ram Chander, the third person killed in the occurrence. The High Court has pointed out a number of anomalies in his

deposition before the court. Further, with reference to his statement made under section 161 of the Code of Criminal Procedure there appears to be a clear attempt on his part to improve the prosecution case and to try to implicate more and more persons as accused.

15. Jagbir (PW.3) is the nephew of Brij Pal Singh (PW.1) and son of the deceased Amar Singh. In his examination-in-chief he supported the prosecution case and named all the accused without assigning to any one of them any specific role. The High Court has pointed out that his statements made in the cross-examination are equally riddled with inconsistencies and also show an effort to improve the prosecution case from stage to stage.

16. Awadhesh (PW.4) was not named as a witness in the FIR. He also appears to support the prosecution case but on a closer scrutiny of his deposition, the High Court has pointed out a number of discrepancies.

17. Bhurey (PW.5) is one of the injured witnesses. He has named the respondents as the accused but at the same time he said that some of the miscreants were covering their faces. He was unable to disclose how and at whose hands he himself received the injuries.

18. The High Court has examined the prosecution witnesses in considerable detail and has observed that in the background of the long and very hostile enmity between the two sides and the witnesses being highly interested, it would not be safe to rest the respondents' conviction on their evidences.

19. On going through the judgments of the trial court and the High Court and the depositions of the prosecution witnesses, we are unable to hold that the view taken by the High Court is unreasonable or implausible. We are satisfied that in the overall facts and circumstances of the case, no interference is warranted with the judgment of the High Court in exercise of the powers under Article 136 of the Constitution of India. The appeal is, accordingly, dismissed.

.....J.
(Aftab Alam)

.....J.
(R.M. Lodha)

New Delhi,
April 16, 2013.