

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
ABDUL & ORS.

DATE OF JUDGMENT: 05/05/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

JU D E M E N T
S.P. KURDUKAR, J.

The village Tilokpur consists of several hamlets, of which Kurthara is one where Abdul Ali son of Maikoo (A-1) was residing but later on he shifted to village Tilokpur. Mustaffa (A-2) was also residing at village Kurthara but thereafter shifted to village Tilokpur. Vikram (A-3) and Ramanuj (A-4) are the residents of village Kurthara. All these four accused persons happened to be close friends of each other, of whom, Abdul Ali (A-1) was the Pradhan of Tilokpur Gram Panchayat for about fifteen years until he lost the election to the post of Pradhan to Shanker Lal (since deceased). At the time of incident which took place on December 24, 1983, undisputedly Shanker Lal was the Pradhan who belonged to the opposite group. The accused and in particular Abdul Ali (A-1) did not cherish the success of Shanker Lal as the Pradhan of village Tilokpur. The victory of Shanker Lal as the Pradhan was celebrated by his supporters in the village which added an additional insult to the ego of A-1. According to the prosecution, these factors lead to the strained and inimical relations between the two groups, one headed by A-1 and the other by Shanker Lal.

2. It is alleged by the prosecution that a year prior to the incident in question, A-1 and his associates had attempted to commit the murder of Shanker Lal, but he survived and at the material time a criminal case under Section 307 of the Indian Penal Code was pending against them. A case under Section 107 of the Criminal Procedure Code was also pending against A-1.

3. According to the prosecution, a day before the incident in question, Shanker Lal received a notice relating to the 'No Confidence Motion' being moved against him. It was alleged that A-1 and his associates were instrumental in moving this 'No Confidence Motion'. Shanker Lal, therefore, on December 24, 1983 i.e. the date of incident left his house at about 7.30 a.m. along with his brother Mangal (PW 1) and uncle Chhote Lal (PW 2) and reached the house of Dwarika Prasad (DW 1) to discuss about the 'No Confidence Motion'. In the said meeting, it was decided to challenge

the validity of the 'No Confidence Motion' before an appropriate forum and to obtain a stay order; for that purpose, they were to go to Lucknow. Dwarika Prasad (DW 1) told Shanker Lal and his associates to go ahead and he would join after a short time. Accordingly, Shanker Lal, Mangal and Chhote Lal left the house of Dwarika Prasad and when they reached near the house of Dhanendra Jain, A-1 armed with his double barrel gun, A-2 and A-3 armed with katta (country made pistol) and A-4 armed with banka suddenly appeared on the scene of offence and encircled Shanker Lal. A-4 used filthy language against Shanker Lal. A-1 then suddenly fired at Shanker Lal. A-4 assaulted Shanker with banka whereas A-2 and A-3 fired from their katta (country made pistol). Shanker Lal on receiving a gun shot and other injuries fell down and died at the spot. This incident happened at about 8.45 a.m.. The sound of firearms and the cries raised by Mangal and Chhote Lal attracted the attention of a couple of persons including Mahadin and Mahabir. All the accused thereafter fled away.

4. Mangal (PW 1) dictated the report of the incident to his uncle Chhote Lal (PW 2) and was signed by both of them. They carried the report to the police station Masauli, Distt. Barabanki and handed it over to HC Sukhanta Ram (PW 3) who prepared the FIR (Ex. Ka-2) and registered the case at about 1.00 p.m. Mohan Lal Pandey (PW 6), the SHO along with police force reached the place of incident for necessary investigation. After drawing up an inquest panchanama (Ex. Ka-5) on the dead body, it was sent for post mortem examination through constable Jagdish Pandey and village Chowkidar Rahmat Ali. Dr. Ram Mohan (PW 4) held the autopsy on the dead body on 25th December, 1983. Mohan Lal Pandey (PW 6) then prepared several panchanamas and recorded the statements of various witnesses. During the course of investigation, Mohan Lal Pandey reliably learnt that A-1 had deposited his fire arm on December 24, 1983 at about 9.30 a.m. in the shop of Waheb Ali. The said weapon came to be seized under seizure panchanama on 6th January, 1984. During the course of investigation, the accused person came to be arrested. After completing the investigation, all the four accused were put up for trial for an offence punishable under Sections 302/34 of the Indian Penal Code for committing the murder of Shanker Lal.

5. The accused denied the allegation levelled against them and pleaded that they have been falsely implicated in the present crime out of enmity. They are innocent and they be acquitted.

6. The prosecution in support of its case principally relied upon the evidence of two eye witnesses, namely, Mangal (PW 1) and Chhote Lal (PW 2) in addition to the evidence of Dr. Ram Mohan, M.O. (PW 4) and panch witnesses and various panchanamas. The accused in support of their defence examined Dwarika Prasad (DW 1).

7. The IVth Addl. Session Judge, Barabanki, on appraisal of oral and documentary evidence on record by his judgment and order dated 31st August, 1988 convicted all the four accused persons under Sections 302/34 of the Indian Penal Code for committing the murder of Shanker Lal. The trial judge awarded death sentence to Abdul Ali (A-1) and made a reference under Section 366 Cr.P.C. to the Allahabad High Court, Bench at Lucknow. A-2 to A-4 were sentenced to suffer imprisonment for life. The reference made by the trial court came to be numbered being Capital Sentence Reference No. 3 of 1988. In the meantime, all the four accused persons filed Criminal Appeal to the High Court challenging the legality and correctness of the judgment and order of conviction and

sentence passed against them. All these criminal appeals along with aforesaid reference were here together. The High Court, on reappraisal of evidence and other materials on record vide its judgement dated 1st December, 1988 allowed all the three appeals filed by the accused persons, rejected the reference and acquitted each one of them of the charges levelled against him. It is this judgment and order of acquittal passed by the High Court which is sought to be challenged by the State of U.P. in these criminal appeals. Since these criminal appeals arise out of a common judgment, they are being disposed of by this judgment.

8. We heard the learned counsel for the parties and perused the oral evidence and other material on record. We have also gone through the judgments of the courts below and in our considered view the impugned judgment of the High Court is not only erroneous on interpretation of Section 174 Cr.P.C. but it suffers from serious infirmity as regards appreciation of evidence on record in proper perspective. We are conscious that we are dealing with the judgment of acquittal passed by the High Court. Unless, we find that the impugned judgment is based on misconception of law and erroneous appreciation of evidence on record, this Court would not interfere with the judgment of acquittal. We may, therefore, point out how the findings recorded by the High Court are unsustainable.

9. While disbelieving the correctness and reliability of the FIR, the High Court heavily placed reliance upon the contents of the inquest panchanama (Panchayatnama) prepared under Section 174 of the Criminal Procedure Code and contrasted with the recitals in the FIR. The High Court held that in the inquest panchanama, it was recorded that Shanker Lal was shot dead by fire arm but it did not make any reference to the fact that Shanker Lal was also assaulted by banks. The investigating officer has failed to record any injury on the person of Shanker Lal having been caused by banka. The High Court then observed as under:-

"The primary purpose of holding an inquest is to ascertain the cause of death and to find out whether it is homicidal, suicidal or accidental. The law therefore, requires a Police Officer to make an investigation and prepare a report describing the wounds and indicating by what weapon such wounds appear to have been caused. The inquest report, though a document of limited scope and nature, can nevertheless be utilised under section 145 of the Evidence Act.

As pointed out earlier, in the instant case, the inquest report is silent as to the use of banka. Why has the use of banka not been mentioned in the "Panchayatnama" is a question which immediately crops up for consideration in view of the recitals in the F.I.R. mentioning in unambiguous words that the deceased was also assaulted by banka which was wielded by Ramanuj. What is the answer of the above question is the next question?"

The High Court then went on to

observe:-

"Once it has come to the knowledge of the investigating officer that the deceased had also been assaulted by banka which was allegedly used by one of the appellants, there was no occasion for him not to mention the use of banka in the inquest report unless it can be attributed to him that he, from the very beginning of the investigation attempted to screen out or shield Ramanuj, but, according to the allegations in the FIR was armed with 'banka'.

10. The interpretation of Section 174 of the Criminal Procedure Code sought to be given by the High Court is apparently contrary to the law laid down by this Court in *Pedda Narayana & Ors. Vs. State of Andhra Pradesh* 1975 (Suppl) S.C.R. 84. We may usefully reproduce the relevant observations which are as under:-

"Another point taken by the learned Addl. Sessions Judge was that in the inquest report details of the overt acts committed by the various accused have not been mentioned in the relevant column. The learned Judge in fact has assumed without any legal justification that because the details were not mentioned in the requisite column of the inquest report, therefore, the presumption will be that the eye witnesses did not mention the overt acts in their statements before the police. To begin with it seems to us that the learned Additional Session Judge's approach is legally erroneous. A statement recorded by the police during the investigation is not at all admissible and the proper procedure is to confront the witnesses with the contradictions when they are examined and they ask the Investigating Officer regarding those contradictions. This does not appear to have been done in this case. Further more, proceedings for inquest under Section 174 of the Code of Criminal Procedure have a very limited scope."

It was then observed:-

"A perusal of this provision would clearly show that the object of the proceeding under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstance he was assaulted

appears to us to be foreign to the ambit and scope of the proceedings under Section 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report."

In view of this settled position of law, in our considered opinion, the very foundation of the judgment of the High Court is rendered unsustainable. The High Court disbelieved the evidence of Mangal (PW 1) and Chhote Lal (PW 2) on the ground that their evidence is inconsistent with the recitals in the inquest panchanama. The observations of the High Court in this behalf are as under:-

"It may be contended that according to the recitals in the FIR, the deceased had caught hold of the banka and, therefore, there was no injury caused on the person of the deceased which could be attributed to the use of banka. Banka, which is a heavy sharp cutting weapon, was in the hand of Ramanuj and he has attempted to give a blow on the person of the deceased. Since the intention was to commit the murder, it can be reasonably inferred that the banka was used with considerable force. If in that situation it was caught hold of by the deceased, serious wounds would have been caused on the hand of the deceased. Such an injury has not been noticed by the Investigating Officer on the person of the deceased which also would indicate that Ramanuj was sought to be screened out from the scene of occurrence."

It is this basic foundation in the impugned judgment which has resulted into erroneous appreciation of prosecution evidence on record. We may briefly set out the reasons for acquittal recorded in the impugned judgment, (1) the witnesses are close relatives of Shanker Lal; (2) Dwarika Prasad although shown as a witness in the charge sheet, was given up at the trial; (3) if Shanker Lal was to go to Lucknow for obtaining the stay order against the 'No Confidence Motion', surely he would have carried some money with him but in fact what was recovered from his person was only 70 paise; (4) the incident took place in a busy locality but the prosecution did not examine any person from the said locality; (5) Shanker Lal was a history sheeter and involved in many crimes; that he had many enemies in the village and, therefore, the possibility of assault on Shanker Lal by some other persons other than the accused cannot be ruled out. The High Court then observed:-

"A person would go to Court specially the High Court after having arranged for the money to meet the expenses involved in the institution of the case. Three persons, namely, Shanker Lal (deceased), his brother Mangal (PW 1) and uncle Chhote Lal (PW 2) were

to go either to Barabanki or Lucknow, which would mean that apart from litigation expenses, travelling and other sundry expenses for three people should have been with the deceased. But the investigating officer recovered only 70 paise from the pocket of the deceased vide recovery memo (Ex. Ka-12) which was sealed in an envelop (Ex.3)."

11. The above referred findings in our considered view are totally unsustainable for the following reason:-

It is not and cannot be disputed that Shanker Lal met with a homicidal death. Dr. Ram Mohan (PW 4) held the autopsy on the dead body of Shanker Lal and noticed the following injuries:-

1. Lacerated wound on the left side of neck 4 c.m. x 1/1.4 c.m. x muscle deep 2 c.m. above left collar bone.

2. Gun shot wound of entry 3 c.m. x 3 c.m. x chest cavity deep, circular in shape surrounding skin is blackened and hairs are signed. The wound is situated on the left side of chest. 3 c.m. is above and lateral to the left nipple. Margins are inverted.

3. Gun short wound of entry on the right side of abdomen 2 c.m. x 1/1.2 c.m. x abd. cavity deep 3 c.m. right to the umbilicus. Margins are inverted surrounding skin is blackened and hairs are signed.

4. Incised wound on the point of right thumb on the pulp 1 c.m. x 0.4 c.m. x muscle deep.

5. Gun shot wound of exit on the right side of lower back (limber area) 5 c.m. x 3 c.m. x abd. cavity deep. Margins are inverted. The wound is corresponding with injury No.3.

6. Contusion on the right scapular region 1 c.m. x 1 c.m. in size.

7. Two sub-cutaneous swelling 1 c.m. x 1 c.m. on the left side of chest 5 c.m. below and lateral to the left nipple. Some rounded foreign body is felt under the skin.

The Medical Officer opined that the cause of death was shock and haemorrhage as a result of fire arm injuries. We, therefore, unhesitatingly conclude that Shanker Lal met with a homicidal death.

12. Coming to the culpability of the accused persons, the evidence of two eye witnesses, namely, Mangal (PW 1) and Chhote Lal (PW2) in our opinion is totally unblemished and can be safely accepted as credible one. Mangal is the brother of Shanker Lal. He has stated that on December 24, 1983, he along with Shanker Lal and Chhote Lal (PW 2) left the house at 7.30 a.m. and went to the house of Dwarika Prasad (DW 1) to discuss about the 'No Confidence Motion'. The copy of the notice of 'No Confidence Motion' was being

carried by Shanker Lal. After a brief halt at the house of Dwarika Prasad (DW 1), they left his house in order to go to Lucknow for taking appropriate legal proceeding and to obtain a stay order. When they reached near the house of Dhanendra Jain, all the four accused appeared on the scene of offence. A-1 was armed with double barrel gun, A-2 and A-3 were armed with katta and A-4 was armed with banka. A-4 uttered a few abusive words and immediately thereafter A-1 fired at Shanker Lal. A-2 and A-3 also fired from their katta causing bullet injuries to Shanker Lal. A-4 assaulted with banka. The incident took place at about 8.45 a.m. and the First Information Report came to be lodged at Masauli police station at about 1.00 p.m. The FIR lodged by Mangal (PW 1) in all material particulars corroborated his evidence. All necessary details about the assault including the role and weapon used by each accused persons has been referred to in the FIR. Mangal (PW 1) then stated that his brother Shanker Lal died on the spot. The witness was although cross-examined at a great length but here is absolutely no material brought out during the cross-examination to discredit his testimony. We, therefore, see no hesitation in accepting the evidence of Mangal (PW 1) as credible one. Chhote Lal (PW 2), the uncle of Shanker Lal again corroborated the evidence of Mangal (PW 1) in all material particulars and he narrated the entire story in the same sequence without any omission or mistake. In addition to the above evidence, Chhote Lal (PW 2) has stated that he was carrying with him Rs. 1400/- to Rs. 1500/- for court expenses. There is some inconsistency as regards who was carrying the said money but in our opinion the said inconsistency does not demolish the substratum of the prosecution case. It is also relevant to note that during the inquest panchanama, a notice of 'No Confidence Motion' was recovered from the person of Shanker Lal. This is an independent circumstance which speaks about the truthfulness of the prosecution case that Shanker Lal, Mangal (PW 1) and Chhote Lal (PW 2) then decided to go to the Court to obtain the stay order against the 'No Confidence Motion'. There is no serious challenge to the evidence of Mangal (PW 1) and Chhote Lal (PW 2) that they were going along with Shanker Lal to Lucknow. The presence of both these witnesses, therefore, cannot be doubted. If this be so, in our opinion, the High Court had committed a serious error in not appreciating the evidence of these two eye witnesses in a proper perspective and had erroneously discarded the prosecution story on a erroneous interpretation of Section 174 Cr.P.C. We are, therefore, of the considered view that the judgment of the High Court is totally unsustainable and needs to be set aside.

13. Consequently upon conviction of all the four accused persons under Section 302/34 of the Indian Penal Code, the trial court awarded a capital punishment to Abdul Ali (A-1) and imprisonment for life to A-2 to A-4 vide its judgment and order dated 31st August, 1988 and made a reference to the High Court. The High Court, however, rejected the reference; allowed the criminal appeals filed by the four accused persons and acquitted each one of them vide its order dated 1st December, 1988. Present appeal were filed in 1990 and they are being disposed of in April, 1997. Having regard to the passage of time, we do not think it proper to confirm the death sentence awarded to Abdul Ali (A-1) by the IVth Addl. Session Judge. We reject the reference. We uphold the conviction of A-1 to A-4 under Section 302/34 of the Indian Penal Code and sentence each of the accused persons to suffer imprisonment for life.

14. For the aforesaid conclusion, the appeal filed by the

State of U.P. is allowed. the judgment and order of acquittal dated December 1, 1988 passed by the High Court are set aside and the judgment and order of conviction dated 31st August, 1988 passed by the trial court against accused A-1 to A-4 under Section 302/34 of the Indian Penal Code are restored. However, the death sentence awarded by the IVth Addl. Session Judge Barabanki to Abdul Ali (A-1) is commuted to imprisonment of life. Capital Sentence Reference No. 3 of 1988 is rejected. A-1 to A-4 who are on bail shall surrender to their bailbonds forthwith to serve out the sentences.

JUDIS