

CASE NO.:
Appeal (crl.) 1272 of 2001

PETITIONER:
Jai Pal & Ors.

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 31/01/2003

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:

J U D G M E N T
SANTOSH HEGDE, J.

The appellants and one Seti Lal were charged for offences punishable under Sections 302 and 307 read with Section 149 IPC before the II Additional Sessions Judge, Mainpuri, U.P. The trial court having found them guilty of the said offence, they were sentenced to undergo life imprisonment for the offence under Section 302 read with Section 149 IPC. They were also found guilty of the offence punishable under Section 307 read with Section 149 and were sentenced to undergo RI for 7 years. They were further sentenced to undergo 2 years' RI under Section 148 IPC. The learned Sessions Judge directed the sentences to run concurrently.

The said accused persons preferred Criminal Appeal No.993 of 1980 before the High Court of Judicature at Allahabad. During the pendency of the appeal, the fourth accused Seti Lal died and the appeal abated so far as he was concerned. The High Court concurring with the findings of the courts below dismissed the said criminal appeal, consequent to which the appellants are before us in this appeal. Brief facts necessary for disposal of this appeal are as follows :-

Deceased Raghubir Singh was a witness in a murder case in which these appellants were accused persons. On 4.10.1977, when the deceased along with PW.1 and two others by name Deputy Singh and Onkar Singh were returning from the court at about 5.30 p.m. to their village, near a Peepal tree at the distance of about one furlong from the village, the appellants along with some other persons all wearing police uniform came armed with guns and rifles and started shooting at Raghubir Singh and others, consequent to which Raghubir Singh fell down dead while PW-1 Mahesh Babu sustained an injury on his hand. The other two were not injured. It is the prosecution case that PW-1 and the other two persons accompanying the deceased got scared and ran away and a complaint in regard to this incident was lodged at about 9.20 p.m. in the Police Station at Ekka. Based on the complaint given by Mahesh Babu (PW-1) Ex.Ka-1 was registered by PW-8, the Investigating Officer, who then left for the place of occurrence but he did not find the dead body of the deceased. It is stated that on the next day, a headless body of Raghubir Singh was found near Arind river. PW-8 states that he on that day recorded the statement of witnesses and went to the place of incident and conducted spot Mahazar and he recovered 6 empty cartridges of 30 carbine, 8

empty cartridges of 315 bore rifle and 5 empty cartridges of 12 bore. He also states that he collected the blood stained and plain earth from the scene of occurrence. On completion of the investigation, a chargesheet Ex.Ka-15 was submitted against the four named accused and another Sajjan. However, since the said Sajjan could not be traced, his case was separated from the rest of the identified accused and the II Additional Sessions Judge Mainpuri after trial convicted the accused persons, as stated above.

Learned counsel appearing for the appellant stated that both the courts below have seriously erred in placing reliance on the evidence of PWs. 1 and 7 which is the only evidence in regard to the incident in question and also in regard to the identification of the dead body. He contended that both these witnesses have turned hostile and have not supported the prosecution case inspite of the same the courts below relied upon their evidence to base a conviction. The learned counsel appearing for the State tried to justify the conviction.

We have carefully gone through the material on record and heard the argument. At the outset itself we must express our surprise how the two courts below could have based a conviction on the material produced by the prosecution in this case. PW-1 who, according to the prosecution, is an eye-witness has not supported the case of the prosecution. He was permitted to be cross-examined by the prosecution. He in examination-in-chief has stated that at about 5.30 in the evening they reached near the peepal tree near their village along the Canal (Bambaki Patri) where they saw nine persons coming from village side and they were in police uniform. The witness says that he identified Nathu Ram, Tirth Prakash out of them. Thereafter the witness says that those persons told him and others that they will not spare the deceased on that day and so saying those persons who were in police uniform and armed with guns and rifles started firing, consequent to which Raghubir Singh fell down dead. The witness also says that he sustained pellet injury on his left hand, witness thereafter says that Onkar Singh and Deputy Singh ran away and the witness went to his house. On reaching the house, he informed his elder uncle's wife and his mother that same persons who killed his father, killed Raghubir Singh also. None of the persons named by him in this part of his evidence are appellants before us nor were they the accused persons before the trial court. In the cross-examination by the prosecution, this witness stated thus - "I got true name of accused written in Ex.K-1. It is true when we came near the pipal tree 12-13 persons surrounded us, I know 9 persons out of them accused Jaipal Seti, Ghamdani and Suresh present in Court are out of 9 persons, Kunwar Pal, Nathu, Ramtirath, Ram Prakash and Sajjan were alongwith him, I have heard that Kunwarpal, Ramtirath, Ram Prakash, Nathu, have been killed in Police encounter." Though in this part of his examination, he has named the appellants herein he has not attributed any overt act to these persons. This part of his evidence was understood by the trial court as this witness having said that these persons named by him had participated in the attack on the deceased which according to us is a clear misreading of the evidence. The trial court in this regard held thus : "In his cross examination he has named all the four persons as having participated .. and further admitted that he had not named the accused earlier in counter fear (sic) of the accused persons."

From the part of evidence extracted by us herein above, it is clear that PW-1 has not stated that these accused had actually participated in the attack. This is an incorrect inference drawn by the trial court. That apart admittedly though the incident in question has taken place on 4.10.1977 and this witness had

personally given the complaint as per Ex.Ka-1, his statement was recorded only on 24.11.1977 nearly 50 days after the incident in question. The explanation given by PW-8 in regard to this inordinate delay is that this witness was not available for recording the statement, cannot be accepted on its face value. The courts below have not even adverted to this part of the lacunae in the prosecution case. The other witness on whom the trial court placed reliance to base a conviction is PW-7 who, according to the said court, has corroborated the evidence of PW-1. We have gone through the evidence of this witness also and are of the opinion that the courts below were once again wrong in inferring that this witness has corroborated the evidence of PW-1. At the outset, we should record even this witness's statement was recorded only on 24.11.1977 and there is no acceptable explanation for this delay. This witness has also turned hostile and was cross-examined. In his examination-in-chief, he merely says that he saw 9 persons in police uniform coming from the opposite side and started firing. He stated that he could not identify any of them, hence, prosecution was permitted to cross examine. In the cross-examination, he like PW-1 stated "I.O. Darogaji went to village in respect of this case. He interrogated me, I did not say to Sub-Inspector Darogaji) that all the persons were seen in day light Sajjan, Kunwarpal Singh, Ramtirath, Ram Prakash and Nathu Jaipal Ghanandi Suresh are residents of our village. I could not tell that why did Sub Inspector recorded my statement." We fail to understand how this evidence even if correctly read could support the prosecution in identifying the accused persons. Still the trial court found sufficient material to base a conviction on the basis of the evidence of these two witnesses. As a matter of fact, there is hardly any evidence worth acceptance even in regard to identification of the body. The witness who was examined in this regard by the prosecution is PW-3 who has also turned hostile and who in his examination-in-chief has stated that "I cannot say that the dead body was of Raghubir Singh." Nothing in support of the prosecution is elicited in the cross-examination. It is based on such evidence the trial court convicted the accused persons and in appeal the High Court rather surprisingly accepted the finding of the court below. We are unable to accept the finding of the High Court also which, in our opinion, has fallen into the error committed by the trial court.

Having considered the material on record, we are unable to accept the findings of the two courts below that the prosecution through the evidence of PWs. 1 and 7 has established beyond all reasonable doubt that these appellants are responsible for the murder of Raghubir Singh, hence this appeal has to succeed and the same is allowed. The appellants shall be released forthwith from the custody, if not required in any other case.