

CASE NO.:
Appeal (crl.) 229 of 2002

PETITIONER:
Ram Kishan & Ors.

RESPONDENT:
State of Uttar Pradesh

DATE OF JUDGMENT: 10/09/2004

BENCH:
K.G. Balakrishnan & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

K.G. BALAKRISHNAN, J.

These five appellants were found guilty of murder by the District and Sessions Judge, Varanasi, for having caused the death of one Shiv Shankar Singh. They preferred an appeal before the High Court of Allahabad. The appeal was dismissed and the conviction of the appellants under Section 302 read with Section 149 and under Section 323 read with Section 149 IPC was confirmed. The findings of the High Court are challenged before us.

Deceased Shiv Shankar Singh was a resident of Phoolpur village in the Varanasi district. On 11.10.1979, there was a Bharat Milap 'mela' at Mangari Bazar. Deceased Shiv Shankar Singh had gone to witness the said 'mela'. There, he met PW-1 Moti Chand. Moti Chand and Shiv Shankar Singh spent some time at the venue of the 'mela' and during night they came to the house of the father-in-law of deceased Shiv Shankar Singh, which was very close to Mangari Bazar. On the next day, i.e. 12.10.1979, at about 8.00 A.M., both Moti Chand and Shiv Shankar Singh left the house on a motorcycle. Moti Chand was driving the motorcycle while deceased Shiv Shankar Singh pillion-riding the same. When they reached near the pumping house of one Bhaggan Singh @ Vibhuti Narain Singh, the appellant Bansh Narain Singh came all of a sudden and intercepted the motorcycle. Bansh Narain Singh shouted that Shiv Shankar Singh shall not be spared. The other appellants, who were hiding in the nearby 'Arhar' field armed with 'Lathis' fitted with iron rings, came out and assaulted Moti Chand who fell on the ground. Then they started assaulting Shiv Shankar Singh with 'Lathis'. Shiv Shankar Singh sustained various injuries and died on the spot. Hearing the alarm raised by the injured, the other witnesses came there and the appellants fled the place immediately.

Injured Moti Chand proceeded to the nearby Phoolpur Police Station and gave the F.I. statement at about 9.45 A.M. on 12.10.1979. Moti Chand was sent for medical examination by the S.H.O., who then immediately proceeded to the scene of occurrence. He recorded the statements of Moti Chand and other witnesses, namely, Jagdish, Satya Narain, Rama Shankar Singh and Matter @ Raj Narain and Ram Murat. He held an inquest over the dead body and also prepared a scene 'mahzar' and took custody of the motorcycle. Later, the dead body was sent for post mortem. On 15.10.1979, the Investigating Officer arrested the appellants and filed the final report.

The learned Sessions Judge as well as the High Court relied on the evidence of PW-1 Moti Chand and PW-2 Rama Shankar Singh and PW-6 Satya Narain Singh and convicted the appellants.

Learned counsel for the appellants challenged the findings of the Sessions Judge as well as the High Court on various grounds. It was submitted that the

three eye witnesses on whom the courts placed reliance were all interested witnesses as they were close friends of deceased Shiv Shankar Singh. The learned counsel pointed out the various facts to indicate that these witnesses were very strong supporters of deceased Shiv Shankar Singh. It was argued that Moti Chand must have been a very close friend of the deceased as both of them had spent a lot of time together at the 'mela' and later the deceased took Moti Chand to his father-in-law's house and both of them stayed in that house for the night. These facts, according to the counsel for the appellants, proved that Moti Chand was not an independent witness. It may be noticed that Moti Chand was an injured witness. According to the prosecution, deceased and Moti Chand travelled on a motorcycle and the same was recovered from the place of the incident by the Investigating Officer, who prepared a 'mahzar' immediately after the incident. Moreover, Moti Chand gave the F.I. statement within hours after the incident. Therefore, the presence of Moti Chand at the place of incident cannot be doubted. Mere acquaintance or friendship of Moti Chand with the deceased by itself cannot be treated as a reason to discard the evidence of the eye witness if it is proved by other satisfactory evidence that the witness was very much present at the time of incident.

The counsel for the appellants strongly urged before us that the evidence of the other two witnesses, namely, PW-2 and PW-6, cannot be accepted as they were also not independent witnesses. It was pointed out that these witnesses were so close to deceased Shiv Shankar Singh that they even filed an affidavit before the court in support of the plea for the cancellation of the bail of these appellants. The incident allegedly happened at 8' o clock in the morning. These witnesses are persons residing in the locality. PW-1 also deposed that these witnesses were present at the time of the incident. The courts below have relied on the evidence of these two witnesses. We do not find any strong reason to discard their evidence.

The counsel for the appellants further contended that the medical evidence adduced in this case disproved the prosecution case. PW-8, Dr. B.B. Subramaniya conducted the post-mortem on the dead body of the deceased Shiv Shankar Singh. He deposed that the injuries found on the body of Shiv Shankar Singh may have been caused by a sharp, heavy cutting weapon. Injury Nos. 3, 4 and 6 are injuries which must have been caused by such a weapon. Injury No. 3 is a chop wound on the left forehead 18 cm. x 4 cm. brain deep; injury no. 4 is a chop wound 10 cm. x 3.5 cm. and injury no. 6 is a chop wound 6.5 cm. and 5 cms. All these three injuries are on the head and the brain was exposed. Counsel for the appellants contended that according to the prosecution, the appellants were armed with 'Lathis' fitted with iron rings and there was no case that any one of the appellants was having any sharp cutting weapon. It is important to note that the 'Lathis' were fitted with iron rings and a heavy blow with such a weapon on the head would have caused the skull to break. The doctor was of opinion that there were multiple fractures of the skull. Except the witnesses saying that 'Lathis' were fitted with iron rings, there is no evidence as to the nature of the weapons. During the course of the investigation, these weapons were not examined. What was the width of the ring with covered the 'Lathis' is not known. Under the circumstances, the Sessions Court and the High Court were justified in accepting the medical evidence.

Another contention urged by the appellants' counsel is that the post-mortem showed that the stomach of the deceased was empty. According to the learned counsel, PW-1 and the deceased had left the house in the morning and they must have taken food and that the prosecution story must be false, for the reason that the incident must have taken place somewhere during the night and that is why the post-mortem evidence is to the effect that the stomach of the deceased was empty. There is no direct evidence as to whether the deceased had taken any food in the morning. The counsel for the appellants pointed to the statement given by the Investigating Officer during the cross-examination in which he had admitted that the father-in-law had stated to him that the deceased had taken breakfast in the morning and thereafter left the house. The father-in-law of the deceased was not examined as a witness. Therefore, the statement given by the Investigating Officer must have been based on the statement of the

father-in-law of the deceased recorded under Section 161 of the Code of Criminal Procedure. The statement given by the Investigating Officer regarding this fact is not directly admissible in law. In the absence of any evidence to the effect as to whether the deceased had taken food or not before leaving the house on 12.10.1979, the findings of the doctor to the effect that the stomach of the deceased was empty are of no consequence.

Counsel for the appellants lastly submitted that in view of the various incongruities in the prosecution's evidence, the appellants should have been acquitted in this case. We are not inclined to accept this argument. The Sessions Court as well as the High Court have taken a reasonable view of the evidence and found the appellants guilty. We are not inclined to interfere with the impugned judgment. The appeal is without any merit and is dismissed accordingly.

JUDIS