

RAM MANORATH

v.

STATE OF U.P.

March 10, 1981

[ Y.V. CHANDRACHUD, C.J. AND A.P. SEN, J. ]

*Indian Penal Code 1860, Ss. 302 and 149—Murders committed by members of an unlawful assembly—Acquittal of some—Effect on prosecution of remaining—Death sentence for two and life sentence for others—Propriety of.*

Out of twelve persons, charged with the offences under section 302 read with section 149 I.P.C. and various other charges, eight were convicted. Two of them, C and R were sentenced to death while the others were sentenced to imprisonment for life. The High Court upheld the death sentence of two accused, acquitted one and confirmed the conviction of others.

The case of the prosecution was that on the day of the occurrence at about sun-set C shot dead two of the deceased while two others were shot by R. The prosecution relied on the dying declaration of one of the deceased and examined four eye witnesses.

In appeals to this Court it was contended on behalf of the appellants that the fact that the trial court did not find it safe to accept the prosecution evidence and acquitted five out of twelve persons mentioned in the F.I.R. at one stage or the other should be sufficient to discard the prosecution case in respect of the other accused as well.

Allowing the appeals in part,

HELD: 1(i). It is difficult to hold that the witnesses had made out an entirely false or concocted story against the appellants. The circumstance that three of the four prosecution witnesses had been injured during the course of the incident affords a strong guarantee of their presence at the scene of the occurrence. There is also no reason why the four eye witnesses should falsely implicate persons against whom they had no grouse. [197 F-G]

(ii). The reason why the trial court and the High Court acquitted some of the accused was that in the case of some of them there was a possibility of mistaken identity while, in regard to some others, the evidence was not of such a nature or character as to justify the acceptance of their complexity beyond a reasonable doubt. [197 H]

2. One of the accused J must be acquitted for the reason that though his name was mentioned alongwith the names of eleven others at the outset of the First Information Report, the text of that report does not attribute any part to him at all. His name had been included in an omnibus manner, by saying that he along with others wielded his lathi. [198 C-D]

**A** 3. It is unsafe to sentence C and R to death. One of the deceased implicated R in his dying declaration as the person, who shot at him but as pointed out by the Trial Court itself, the dying declaration suffers from several infirmities and, it cannot therefore, be relied upon for the purposes of holding that it was this accused, who shot the deceased. Secondly, the occurrence took place an hour after sun-set and it is hardly likely that if a large group of ten or twelve persons had formed an unlawful assembly, the witnesses would be in a position to identify minute details of the incident. The prosecution version in regard to specific overt acts that C and R fired shots resulting in the fatal injuries to the two deceased seems exaggerated. No distinction can be made in the case of the other accused, who have been sentenced to life imprisonment and the case of these two accused. The sentence of death imposed on them is, therefore, set aside. They are sentenced to imprisonment for life. [198 E-G, 199 B-D]

**B**

**C** 4. The conviction and sentence of the remaining appellants are confirmed. [199 E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 345 & 346 of 1978.

**D** Appeals by special leave from the Judgment and Order dated 14.1.1978 of the Allahabad High Court (Lucknow Bench) in Criminal Appeals Nos. 496, 508 and 542 of 1977.

*Frank Anthony and Sushil Kumar* for the Appellant.

**E** *H.R. Bhardwaj, G. S. Narayanan and R. K. Bhatt* for the Respondent.

The Judgment of the Court was delivered by

**F** CHANDRACHUD, C. J. Twelve persons were put up for trial before the learned Additional Sessions Judge, Bahraich on various charges, the principal charge being under section 302 read with section 149 of the Penal Code. The learned Judge acquitted four persons and convicted the remaining eight of the offences of which they were charged. Two out of those eight persons namely, Chhotey and Ram Manorath were sentenced to death while the remaining six were sentenced to imprisonment for life. The sentences awarded for the other offences were directed to run concurrently with that sentence. The High Court of Allahabad acquitted one more person and convicted the remaining seven. The High Court also upheld the death sentence awarded to Chhotey and Ram Manorath. From out of the seven persons convicted by the High Court, only six are before us since one of them, Bajnath, who was awarded life imprisonment has not appealed from the judgment of the High Court.

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The incident out of which these proceedings arise took place at about sunset time on December 5, 1973 in a village called Bhawanipur. Four persons died during the course of that incident, namely, Guley, Abbas, Wali Mohammad and Nankau. Guley and Abbas are alleged to have been shot dead by Chhotey while the other two are alleged to have been shot by Ram Manorath. Guley and Abbas died instantaneously, Nankau a little later and Wali Mohammad about a week later.

In support of its case the prosecution examined four eye witnesses : Noor Mohammad, P. W. 1, Shaukat Ali, P. W. 2, Nafees, P. W. 4 and Naem, P. W. 5. The prosecution also relied on the dying declaration of Wali Mohammad which was recorded by a Magistrate. The evidence of these four witnesses as also the dying declaration have been accepted by both the Courts.

Shri Frank Anthony, who appears on behalf of five out of the six appellants before us, has drawn our attention to various circumstances which according to him render the entire prosecution case suspect and unacceptable. It is urged by the learned counsel that a large number of persons were roped in on mere suspicion which is shown by the very fact that five out of the 12 persons who were mentioned in the First Information Report were acquitted at one stage or the other for the reason that it would not be safe to accept the evidence led by the prosecution against those persons. The same test, according to the learned counsel, must apply to the cases of the remaining accused also. Having considered this submission and the other submissions made by the learned counsel, we find it difficult to hold that the witnesses have made out an entirely false or concocted case against all the appellants. Out of the four eye witnesses examined by the prosecution, Noor Mohammad, Shaukat Ali and Nafees were indisputably injured during the course of the incident in question and that circumstance affords a strong guarantee of their presence at the scene of offence. Counsel himself urged that there was no motive for the offence. If that be so, we are unable to understand why the four eye witnesses should falsely implicate persons against whom they have no grouse. The reason for the acquittal of some of the accused by the Trial Court and the High Court is that there was, in the case of some of them, a possibility of mistaken identity while, in regard to some others, the evidence was not of such a nature or character as to justify the acceptance of their complicity beyond a reasonable doubt. The injuries received by Shaukat Ali, P. W. 2 are quite serious. P. W. 4,

**A** Nafees was not concerned with the incident in any other manner because he was engaged as a mere labourer by the deceased, Wali Mohammad. In so far as the remaining two witnesses nameiy, P.W.1 and 5 are concerned, their presence was virtually admitted on behalf of the principal accused Baijnath who has not chosen to file any appeal before us.

**B** Though this is the true position, we do not consider it proper to accept wholly the evidence led by the prosecution without examining the case of each one of the accused. In that process we find that the appellant Jaisee ought to be acquitted. It is undoubtedly true as contended by Shri Bhardwaj, who appears on behalf of the State of Uttar Pradesh, that Jaisee's name is mentioned in the F.I.R. and that he has been implicated by all the four prosecution witnesses. But the difficulty which we find in accepting the case of the prosecution against this accused is that though his name is mentioned along with the names of eleven other persons at the outset of the First Information Report, the text of that report does not attribute any part to him at all. His name has been included in the text of the report in an omnibus manner by saying that he, along with others, apart from Chhotey and Ram Manorath who were armed with guns, wielded his lathi.

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**E** There is one more aspect of the matter which merits serious attention, and that is whether the death sentence imposed on Chhotey and Ram Manorath must be confirmed. Having given our anxious consideration to this question, especially since four persons were done to death, we find it unsafe to sentence these two accused to the extreme penalty of law. In so far as Ram Manorath is concerned, he is alleged to have shot at Wali Mohammad and Nankau. Wali Mohammad has implicated Ram Manorath in his dying declaration as the person who shot at him but, Shri Sushil Kumar, who appears for Ram Manorath, has very tellingly demonstrated how unsafe it will be to accept the dying declaration. The learned Trial Judge has himself pointed out in paragraph 104 of his judgment the various infirmities from which the dying declaration suffers. We are quite clear that the learned counsel is right in cautioning the Court against the acceptance of the dying declaration which suffers from the infirmities pointed out by the Trial Court. We cannot, therefore, rely on the dying declaration for the purpose of holding that it was Ram Manorath who shot at Wali Mohammad. But then Shri Bhardwaj relies on the evidence of the four witnesses and contends that the part played by Ram Manorath is established on

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that evidence. On that aspect of the matter, we have a serious difficulty in accepting at its face value the evidence of these witnesses in so far as they say that they saw Chhotey and Ram Manorath firing shots at Guley, Abbas, Wali Mohammad and Nankau. It may be recalled that the incident occurred on December 5, 1973 and the almanac shows that the time of the sunset on that day was 5.13 p.m. The incident happened nearly an hour after the sunset and it is hardly likely that if a large group of ten or twelve persons had formed an unlawful assembly, the witnesses would be in a position to identify minute details of the incident. There is not the slightest doubt that the four persons, who died during the course of the incident in question, were done to death by persons who were members of the unlawful assembly, some of whom have been convicted by the trial court and the High Court. But we are unable to accept the prosecution version which, in regard to specific overt acts seems exaggerated, that Chhotey and Ram Manorath fired the shots which resulted in the fatal injuries. No distinction can, therefore, be made in the cases of the other persons who have been sentenced to life imprisonment and the cases of these two persons. We must, therefore, set aside the death sentence imposed upon them.

The result is that the appeals are partly allowed. The appellant Jaisee is acquitted of all the offences of which he was charged and he shall be released so far as the present case is concerned. The conviction of appellants Chhotey and Ram Manorath for the various offences is confirmed but the sentence of death imposed upon them is set aside. We sentence them to imprisonment for life. The conviction and sentence of the remaining appellants are confirmed.

N.V.K.

*Appeals partly allowed.*