

[2009] 9 S.C.R. 985

STATE OF U.P.

v.

SHOBHANATH AND ORS.

(Criminal Appeal No. 276 of 2002)

MAY 8, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

PENAL CODE, 1860:

Sections 147, 148, 302 r/w 302 – Conviction and sentence by the trial court – Set aside by the High Court and the accused acquitted – Correctness of – Held: In view of the facts and evidence on record, High Court was not right in acquitting the accused – Order of acquittal passed by High Court set aside – Order of conviction by trial court restored.

The trial court convicted the respondents under Section 302 r/w Section 149 IPC and sentenced them to life imprisonment and rigorous imprisonment under various Sections. The High Court acquitted the respondents. Hence the appeal.

Allowing the appeal, the Court

HELD: 1. So far as discrepancies between the statements of the eye witnesses and the medical evidences as pointed out by the High Court are concerned, the same appear to be based on misreading of the evidence on record. The incident took place at about 5 p.m. on 2.11.1981. It was the month of November, but at 5 p.m., there would be still day light. It has also come in evidence that the deceased had gone to Gauriganj Bazaar alongwith PW-1 as it was a market day. In a market day people usually go to the market and therefore

A presence of PW-1 with deceased on that particular day
also appears to be natural. [Para 18] [994-A-C]

2. In the post mortem examination, five injuries were
found on the body of the deceased. Said injuries found
B in the post mortem examination when compared with the
injuries recorded in the injury report, it would be
established that all the injuries are similar in nature. So
far as Inquest Report is concerned, the same is prepared
by the police who are not experts like the doctors and
therefore no such weightage could be given on the
C Inquest Report. It is also settled law that Inquest Report
cannot be treated as a piece of admissible evidence. One
of the main grounds for acquitting the accused
respondents by the High Court was alleged discrepancies
D in the aforesaid reports which this Court feels is based
on misreading of evidence and misappreciation. [Para 21]
[994-G-H; 995-A-B]

3.1. PW-1, the informant who was the son of the
deceased in his statement has clearly stated in detail as
E to how the incident has taken place and as to why he did
not intervene when his father was being assaulted by the
said accused persons. He has stated that he could not
immediately get any mode of conveyance to take his
father to the Police Station or to the hospital and he had
F to wait for some time for getting a conveyance to enable
him to shift his father to the Police Station which they
reached at about 6.30 p.m. when report was recorded.
The victim was examined in the Primary Health Centre at
about 7.15 p.m. i.e. within 45 minutes of the incident being
G reported to the Police. That being so, it cannot be said
that there was any undue delay either in reporting the
incident to the police or taking the victim to the hospital.
[Para 23] [995-D-F]

3.2. The High Court has doubted the entire
H prosecution case on the ground of the aforesaid delay

of about an hour in reporting the incident to the Police. But, it is proved and established on record that the entire incident as it happened was mentioned in the First Information Report wherein the name of the eye-witnesses were also mentioned. The informant examined himself as PW-1. He narrated the entire incident as it happened on the day of occurrence and he was cross-examined at length, but his evidence could not be shaken. He had also explained the circumstances in which he has not been assaulted by the accused persons. He also stated in his deposition that he had not taken any such step to catch hold any of such accused persons on account of fear and also because he did not have any weapon in his hands. Further, he has categorically stated that he raised alarm to save his father from the assault by accused persons. The said evidence of PW-1 appears to be cogent and natural. The same also gets corroborated by the evidence of other two eye witnesses namely PW-3 and PW-6 and also by the medical evidence namely the Injury Report and the Post mortem Report. [Para 24] [995-G-H; 996-A-D]

3.3. The High Court was also not right in holding that the aforesaid two eye witnesses could not be accepted as eye witnesses to the occurrence. The High Court held that all the said three witnesses as chance witnesses. The said findings are based on surmises and conjectures. The date of the incident was a market day at Gauriganj and therefore it was natural that persons from the nearby areas would go to the market place. Therefore, PW-1 accompanying his father on the date of the incident to the market and PW-3 and PW-6 being present at the place of occurrence cannot be said to be unnatural. [Paras 25] [996-D-F]

4. So far as the dying declaration of the deceased is concerned, the same apparently was not recorded either

A by the Police Officer or by the doctor. There is some
 B doubt about making of such dying declaration by the
 deceased and therefore, the dying declaration said to
 have been made by the victim was not correctly relied on
 by the High Court. But even if the said dying declaration
 is taken out of purview of the evidence on record, even
 then the statements of the eye-witnesses can under no
 circumstances be doubted and held as untrustworthy.
 [Para 26] [996-F-H; 997-A]

C 5. There is no reason as to why close relatives of the
 deceased would try to rope in someone else as the
 murderers of their near relation and give up the actual
 accused. It is against the human conduct. In a case of
 murder the near relations would make all endeavour to
 see that actual culprits are punished. [Para 27] [997-A-B]

D 6. The order of acquittal passed by the High Court is
 set aside and order passed by the trial court is restored.
 [Para 28] [997-B-C]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
 No. 276 of 2002.

F From the Judgment & Order dated 7.4.2000 of the High
 Court of Judicature at Allahabad, Lucknow Bench, Lucknow in
 Criminal Appeal No. 631 of 1984.

F Pramod Swarup, Bharat Ram and Anil Kumar Jha for the
 Appellant.

G H.L. Agarwal, G.S. Bhatt, P.K. Bhatt, Uma Shanker and
 S.P. Tiwari Praveen Swarup for the Respondent.

The Judgment of the Court was delivered by

H DR. MUKUNDKAM SHARMA, J. 1. This appeal is
 directed against the judgment and order dated 07.04.2000

passed in Criminal Appeal No. 631 of 1984 whereby the Division Bench of the Allahabad High Court acquitted the respondents herein from the charges of offence punishable under Section 147, 148, 302 read with Section 149 of the Indian Penal Code, 1860 (for short "the IPC") by setting aside the order of conviction and sentence dated 14.8.1984 and 16.8.1984 passed by the Special/Additional Sessions Judge, Sultanpur, whereby the trial court convicted the respondents herein under Section 302 read with Section 149 IPC and sentenced each one of them to rigorous imprisonment for life and also sentenced them to R.I. under various sections. So far as accused Hansraj is concerned as he was found to be almost 16 years, an order was passed that instead of jail he be sent to children home.

2. The aforesaid criminal case was registered on the basis of an information submitted by Parasnath Dubey who was PW-1 contending inter alia that on 02.11.1981 at about 5 p.m., he alongwith his father, Ram Abhilakh deceased, were returning back to their home from Lalganj Bazaar. While said Ram Abhilakh Dubey was standing at the crossing of Setha Road at the shop of Ram Kishore Barayee for taking betel, the accused persons, all of a sudden, came there whereupon the accused Shobhanath and Triveni Prasad instigated other accused persons, namely Doodhnath, Vijai Pal (both sons of Ram Kumar), accused Knasu (son of Doodhnath) at which all of them attacked him. It was also stated in the said information that first of all Vijai Pal stabbed him with a knife and other accused persons thereafter started beating him with lathis and that as a result of the said assault, he had fallen on the ground. It was stated that an alarm was raised by Parasnath Dubey because of which Ram Kripal, Ram Bahal, Parasnath and Lalita Prasad and other reached there and saw the occurrence. A report of the incident was lodged at the Police Station Gauriganj District Sultanpur on 02.11.1981 at about 6.35 p.m. Ram Abhilakh Dubey later on succumbed to the injuries i.e. on

A 3.11.1981 at 8.30 p.m.

B 3. The deceased Ram Abhilakh Dubey who received injuries on 02.11.1981 in the aforesaid incident was taken to the hospital at Gauriganj where he was medically examined and an Injury Report was also prepared by the doctor examining him at the hospital Gauriganj, who looking at the grievous nature of injuries received by him sent him to the District Hospital, Sultanpur as his condition was deteriorating. After the death of Ram Abhilakh who died in the hospital on 03.11.1984 at about 8.30 p.m., the post mortem examination was done on C 4.11.1981 at about 4.10 p.m.

D 4. On the basis of the aforesaid written report, a First Information Report was prepared at the Police Station and entries in the General Diary were made. After the death of said Ram Abhilakh Dubey, on 3.11.1981, the case was converted to under Section 304 IPC and entries were made accordingly.

E 5. On receipt of the information, the Police started investigation. During the course of investigation, the accused persons were arrested. After completion of the investigation, the Police filed the charge sheet against all the accused persons. Charges under Section 147, 148 and 302 read with Section 149 IPC were framed against all the accused persons for having formed an unlawful assembly and in furtherance of the common object, all of them committed murder of deceased F Ram Abhilakh Dubey. The accused persons pleaded not guilty to the charges framed and claimed to be tried

G 6. During the trial the prosecution examined number of witnesses to prove the occurrence and the guilt of the accused persons in murdering the deceased Ram Abhilakh Dubey. The complainant and the informant Parasnath Dubey (PW-1) was examined as an eye-witness to the occurrence. Besides him, there were two other eye witnesses who were also named in the FIR namely Lalta Prasad (PW-3) and Ram Bahal Singh

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(PW-6) who were also examined in support of the case of the prosecution. According to their statements, they both witnessed the occurrence.

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7. Dr. D.R.Singh examined Ram Abhilakh Dubey when he was taken to the Primary Health Centre and he prepared an Injury Report. He was examined in the trial as PW-7 and he proved the number of injuries suffered by the deceased on 2.11.1981. He conducted the aforesaid examination which is after the occurrence i.e. at about 7.15 p.m.

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8. Dr. A.C. Joshi who has conducted the post mortem was examined as PW-5 and the post mortem report was exhibited as Ext. Ka-10.

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9. The Investigating Officer who submitted the chargesheet as Ext. Ka 20 was examined as one of the prosecution witnesses. The statements of all the accused persons under Section 313 of the Code of Criminal Procedure (for short "the CrPC) were recorded.

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10. The defense also produced three witnesses in this case in order to prove the formal paper filed on their behalf to establish enmity and motive because of which they are falsely implicated in this case.

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11. The defense case was that both PW-3 and PW-6 namely Lalta Prasad and Ram Bahal Singh respectively came in the witness box in order to help the complainant Parasnath Dubey because they together formed one party in the previous litigation and criminal cases are pending between them and the accused party.

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12. The Additional Sessions Judge by his judgment and order convicted all the accused persons under the aforesaid sections and sentenced them to imprisonment for life. So far as Shobnath, Triveni Prasad, Vijai Pal, Sudhakar and doodhnath are concerned, they were sentenced to life

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A imprisonment under Section 302 read with Section 149 IPC. They were further sentenced to two years R.I. under Section 148 IPC and one year R.I. under Section 147 IPC.

B 13. So far as accused Hansraj alias Hansoo is concerned, since he was aged about 16 years, therefore the benefit of the Children Act, 1960 was extended to him. He was not sentenced to jail and was directed to be in Children Home.

C 14. Aggrieved by the aforesaid order of conviction and sentence, the accused persons filed an appeal before the High Court of Allahabad, Lucknow Bench, which was heard. The High Court after considering the materials on record set aside the order of conviction and sentence passed against the accused respondents and acquitted all of them of the aforesaid charges.

D 15. Being aggrieved by the aforesaid order of acquittal passed by the High Court, the present appeal was preferred by the State of Uttar Pradesh which was entertained and on which we have heard the learned counsel appearing for the respective parties.

E 16. On going through the records and the order setting aside the order of conviction and sentence, we find that the trial court while holding all the respondents guilty of the charges leveled against them held that the dying declaration of the deceased itself would prove and establish the act of involvement of the accused persons in the incident of murdering the deceased. The Additional Sessions Judge also appreciated the statements of PW-1, the informant as also the statements of PW-3 and PW-6 and found that their statements are corroborated to each other and also by the medical evidence. According to the trial court, there was no contradiction in the statements of the witnesses with regard to the weapon being carried by them in their hands and further about the manner of assault given by them to the deceased Ram Abhilakh Dubey.

H Having held thus, the learned Additional Sessions Judge

passed the order of conviction and sentence against all the accused persons.

17. The High Court, however, after hearing the counsel appearing for the parties held that so far as the dying declaration is concerned, the same could not have been given by the deceased immediately after the occurrence as the prosecution witnesses themselves had stated that he became unconscious after receiving the blows and therefore he was not in a stage of giving any such statement although alleged by the prosecution.

The High Court also held that there are discrepancies in the Injury Report and in the post mortem report as also in the x-ray report and that a number of injuries and their nature did not corroborate it with each other. It was pointed out on the other hand the aforesaid four papers namely Inquest Report, Injury Report, Post mortem Report and General Diary indicate different injuries beginning from two injuries extending to four injuries and then completed in five injuries. It was also held by the High Court that all the three witnesses who are said to be eye-witnesses namely PW-1, PW-3 and PW-6 are all chance witnesses and that they do not belong to the place of occurrence and that they are interested witness in giving favourable evidence for roping in the accused persons with whom all of them had long standing enmity. It was also held by the High Court that if all the accused persons had given lathi blows and knife blow, then the number of injuries should have been many more.

The High Court also held that if the aforesaid eye witnesses were present at the place of occurrence then they would have certainly interfered and intervened in the incident and would have definitely chased the culprit and would have tried to catch him and as nothing of that nature is stated, therefore only presumption would be that they were not present at the place of occurrence. Consequently, it was held that the

A prosecution has failed to prove its case and consequently all the accused persons were acquitted.

18. So far as discrepancies between the statements of the eye witnesses and the medical evidences as pointed out by the High Court are concerned, the same appear to be based on misreading of the evidence on record. The incident herein took place at about 5 p.m. on 2.11.1981. It was the month of November, but at 5 p.m., there would be still day light. It has also come in evidence that the deceased had gone to Gauriganj Bazaar alongwith PW-1 as it was a market day. In a market day people usually go to the market and therefore presence of PW-1 with deceased on that particular day also appears to be natural. The place of occurrence is near a betel shop where the deceased had gone for taking betel. The place of occurrence is a tri-junction and by the shop of Ram Kishore Barayee where the deceased had gone to take betel when the accused persons allegedly attacked him with a knife and lathis in their hands.

19. It is stated in the First Information Report and also in the statements of the eye-witnesses that the Vijai Pal had a knife and other respondents had lathis in their hands and that at the instigation of Triveni Prasad and Shobhanath, Vijay Pal inflicted knife blow on the deceased whereas the other accused-respondents started beating by means of lathis.

20. The First Information Report was taken down at the Police Station on 2.11.1981 at 6.35 p.m. and medical examination was done at 2.11.1981 at 7.15 p.m. Injury Report which is proved as Ext. Ka-11 states that about five injuries were found on the body of Ram Abhilakh when he was taken to the Primary Health Centre.

21. In the post mortem examination also, five injuries were found on the body of the deceased. Said injuries found in the post mortem examination when compared with the injuries recorded in the injury report, it would be established that all the

injuries are similar in nature. So far as Inquest Report is concerned, the same is prepared by the police who are not experts like the doctors and therefore no such weightage could be given on the Inquest Report. It is also settled law that Inquest Report cannot be treated as a piece of admissible evidence. One of the main grounds for acquitting the accused respondents by the High Court was alleged discrepancies in the aforesaid reports which according to us is based on misreading of evidence and misappreciation.

22. The incident had happened at about 5 p.m. and the said fact was reported to the Police at 6.30 p.m. The High Court doubted the prosecution case also because of the aforesaid delay in making the report of the incident to the Police. According to the High Court, the Police Station was only about one furlong away and therefore, there was delay in reporting. Let us therefore now proceed to discuss if there was any delay.

23. PW-1, the informant who was the son of the deceased in his statement has clearly stated in detail as to how the incident has taken place and as to why he did not intervene when his father was being assaulted by the said accused persons. He has stated that he could not immediately get any mode of conveyance to take his father to the Police Station or to the hospital and he had to wait for some time for getting a conveyance to enable him to shift his father to the Police Station which they reached at about 6.30 p.m. when report was recorded. The victim was examined in the Primary Health Centre at about 7.15 p.m. i.e. within 45 minutes of the incident being reported to the Police. That being so, it cannot be said that there was any undue delay either in reporting the incident to the police or taking the victim to the hospital.

24. The High Court has doubted the entire prosecution case on the ground of the aforesaid delay of about an hour in reporting the incident to the Police. But, it is proved and established on record that the entire incident as it happened

A was mentioned in the First Information Report wherein the name
of the eye-witnesses were also mentioned. The informant
examined himself as PW-1. He narrated the entire incident as
it happened on the day of occurrence and he was cross-
examined at length, but his evidence could not be shaken. He
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deposition that he had not taken any such step to catch hold
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PW-1 appear to us to be cogent and natural. The same also
gets corroborated by the evidence of other two eye witnesses
namely PW-3 and PW-6 and also by the medical evidence
D namely the Injury Report and the Post mortem Report.

25. The High Court was also not right in holding that the
aforesaid two eye witnesses could not be accepted as eye
witnesses to the occurrence. The High Court held that all the
said three witnesses as chance witnesses. The said findings
E are based on surmises and conjectures. The date of the
incident was a market day at Gauriganj and therefore it was
natural that persons from the nearby areas would go to the
market place. Therefore, PW-1 accompanying his father on the
date of the incident to the market and PW-3 and PW-6 being
F present at the place of occurrence cannot be said to be
unnatural.

26. So far as the dying declaration of the deceased is
concerned, the same apparently was not recorded either by the
Police Officer or by the doctor. There is some doubt about
G making of such dying declaration by the deceased and
therefore, the dying declaration said to have been made by the
victim was not correctly relied on by the High Court. But even if
the said dying declaration is taken out of purview of the
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witnesses can under no circumstances be doubted and held as untrustworthy. A

27. We find no reason as to why close relatives of the deceased would try to rope in someone else as the murderers of their near relation and give up the actual accused. It is against the human conduct. In a case of murder the near relations would make all endeavour to see that actual culprits are punished B

28. In the light of the aforesaid discussion, we allow this appeal, set aside the order of acquittal passed by the High Court and restore the order passed by the trial court. The bail bonds of the accused persons are cancelled. They shall surrender to serve out the remaining part of their sentence. C

29. So far as respondent No. 5 (Hansraj) is concerned, the order of the Trial Court is restored. D

G.N.

Appeal allowed.