Bhagwati And Ors. vs The State Of Uttar Pradesh on 8 April, 1976

Equivalent citations: AIR1976SC1449, 1976CRILJ1171, (1976)3SCC235, AIR 1976 SUPREME COURT 1449, (1976) 3 SCC 235, 1976 ALLCRIC 265, 1976 SCC(CRI) 388, 1976 CRI APP R (SC) 206, 1976 SC CRI R 288, ILR 1976 KANT 1346

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Bench: P.N. Shinghal, R.S. Sarkaria

JUDGMENT

P.N. Shinghal, J.

1. This appeal by Bhagwati, Shital and Ram Avadh, sons of Salaru, is directed against the appellate judgment of the Allahabad High Court dated December 18, 1970 setting aside their acquittal by Civil and Sessions Judge (Gonda Bahraich) of the offence under Section 302 read with Section 34, I.P.C. and sentending them to imprisonment for life for that offence.

2. It was alleged by the prosecution that one Sheo Prasad was the first cousin of Bachchu Lal (P.W. 5). He married Smt. Dharamraji, but had no child. He had some agricultural land in village Nagwa in Gonda district of Uttar Pradesh, but he allowed Bachchu Lal to cultivate it because of his weak health. Sheo Prasad died, and his widow Smt. Dharamraji inherited his fields which however continued to be cultivated by Bachchu Lal, Smt. Dharamraji thereafter went away to Basti as she married Nabbu Lal, who was the brother-in-law of appellant Bhagwati. Thereafter she executed a sale deed (Ex. Ka-29) of the land in favour of Bhagwati on May 11, 1965. A day earlier, Bachchu Lal made an application for mutation of the fields in his name on the basis of his relationship with Sheo Prasad. Bhagwati also made a similar application after execution of the sale deed in his favour and Smt. Dharamraji supported that application by filing her consent on November 15, 1965. Bachchu Lal's case was that, after her remarriage. Smt.Dharamraji forfeited her right to Sheo Prasad's fields; and it is not in dispute that the controversy was pending on the date of the alleged incident.

3. Bachchu Lal was, according to the prosecution, in possession of the land all along and was cultivating it. On July 2,1967, half an hour after sunrise. Bachchu Lal's sons Jokhan and Munna went to Sheo Prasad's field, which was adjacent to their own field, to plough it. After they had ploughed it a little, it is alleged that appellants Bhagwati, Shital and Ram Avadh came there. Bhagwati and Ram Avadh were armed with 'lathis', while Shital was armed with a spear. They began to beat Jokhan and Munna, who cried for help. Lalla (P.W. 1), Sridhar (P.W. 2) and Matai alias

Matadin, who were ploughing their fields nearby, rushed to the place of occurrence. They say the appellants beating both Jokhan and Munna in the field of Sheo Prasad. When Jokhan fell down. Munna ran away to the adjacent field of Molbu, but the appellants brought him to Sheo Prasad's field by dragging him by his leg and beat him again. Lalla (P.W. 1), Sridhar (P.W. 2) and Matai alias Matadin reprimanded the appellants, and they ran away towards the village. The witnesses went near Jokhan and Munna and found that they were about to die. Cots were obtained from the village and Jokhan and Munna were taken to Dhomariya Dih which was at a distance of about a mile. They were then taken in 'ekkas" to police station Nasirganj, which was at a distance of about seven miles from the place of occurrence. Jokhan died on the way near Jamadarpura. An oral report (Ex. Ka-1) was lodged by Lalla (P.W. 1), at the police station at 8.45 a.m. Munna was sent to Sadar Hospital, Gonda, but he also succumbed to his injuries on the way. A case was registered at the police station and it was investigated by Station House Officer Taj Bahadur Singh (P.W. 10). The dead bodies were taken to the mortuary at Gonda and were examined "by Dr. J. Chandra. Appellant Bhagwati was arrested the same day, but appellant Shital was not found until July 5 and appellant Ram Avadh surrendered on July 11.

4. It was with these allegations that the appellants were committed to the Court of Session. As has been stated, they were acquitted by the Sessions Judge, but have been convicted by the High Court of an offence under Section 302 read with Section 34, I.P.C. and sentenced to imprisonment for life.

5. It has been argued by Mr. Anthony on behalf of the appellants that the trial Court had correctly evaluated the evidence of Lalla (P.W. 1) and Sridhar (P.W. 2) and that the High Court was not justified in substituting its own finding on the evidence when there was nothing to show that the view taken by the trial Court was unreasonable. Learned Counsel has argued that the allegation regarding the alleged dragging of Munna by the appellants at the time of the beating was falsified by the medical evidence and was sufficient to discredit the evidence of both Lal (P.W. 1) and Sridhar (P.W. 2). Reference in this connection has been made to Ram Narain v. State of Punjab . It has also been argued that the evidence of the two witnesses deserved to be rejected for the further reason that they had deposed about the dying declaration of Munna which was quite false and had been made up to lend support to the allegation of the prosecution. It has been argued further that the trial Court had correctly taken the view that the incident had taken place much earlier, while it was still dark, and the witnesses could not have seen the incident at all. Our attention has also been invited to the inadequacy of the evidence regarding the alleged motive for the murder, the recoveries said to have been made during the course of the investigation at the instance of appellant Bhagwati, and the failure of the prosecution to examine Matai alias Matadin even though he was mentioned in the first information report to be an eye-witness of the incident.

6. It is well-settled by the decisions of this Court including Mathai Mathews v. State of Maharashtra that the power of an appellate court to review evidence in appeals against acquittals is as extensive as its power in appeals against convictions, and that before an appellate court can set aside an order of acquittal it must carefully consider the reasons given by the trial Court in support of its decision and give its own reasons for rejecting them. Thus if the finding reached by the trial Judge cannot be said to be unreasonable, the appellate court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record. This has been held to be so because

the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The appellate Court therefore should be slow in disturbing the finding of fact of the trial Court, and if two views are reasonably possible of the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it. Mr. Anthony has made a reference in this connection to the decision in Labh Singh v. State of Punjab also. The question therefore is whether it could be said that the finding reached by trial Judge was unreasonable, or whether the view taken by him was a reasonably possible view of the evidence on the record.

7. We have made a brief reference to the bone of contention between Bachchu Lal (P.W. 5) who was the father of Jokhan and Munna deceased and the appellants. It will be recalled that the field where the incident took place belonged to Sheo Prasad, who was a collateral of Bachchu Lal (P.W. 5). There is also satisfactory evidence on the record to prove that it was being cultivated by Bachchu Lal during the lifetime of Sheo Prasad, and thereafter up to the date of the incident. All the appellants have admitted in their statements that the 'chak' of the field was "formed" in the name of Smt. Dharamraji, after Sheo Prasad's death. Nabhu Lal was the brother of the wife of appellant Bhagwati, and the prosecution has led evidence to show that Smt. Dharamraji married Nabhu Lal some time after the death of Sheo Prasad. Appellant Bhagwati was asked about the marriage but while he admitted that Nabhu Lal was his wife's brother, he gave the answer "No Sir, I do not know" to that question. It would therefore appear that there was every justification for the allegation of the prosecution regarding Smt. Dharamraji's marriage to Nabhu Lal. It has been admitted by all the appellants that Smt. Dharamraji executed a sale deed (Ex. Ka-29) dated May 11, 1965 of the field in question in favour of Nabhu Lal's brother-in-law appellant Bhagwati and, as has been stated earlier that gave rise to litigation between the appellants and the deceased because of Bachchu Lal's stand in regard to the forefeiture of Smt. Dharamraji's right to the field after her remarriage and his own claim to inherit it because of his relationship with Sheo Prasad. It has been admitted by appellant's Bhagwati and Shital that the litigation was pending even during the course of the trial. In these facts and circumstances, there can be no doubt that the appellants had a motive for murdering Bachchu Lal's sons Jokhan and Munna. Even the trial Judge has recorded a finding that there was a "strong motive" for the murders, and the High has upheld that finding.

8. It is not in dispute that the incident took place in Sheo Prasad's field and that both Jokhan and Munna died of violence. The learned trial Judge however arrived at the finding that the incident might have taken place while it was still dark and "in that event, Lalla and Sridhar, or, for that matter Matadin alias Matai, could not see the occurrence as stated in the prosecution case" and that in that "setting" the evidence of Lalla and Sridhar could not be said to be reliable.

9. We have examined the evidence, and we find that both Lalla (P.W. 1) and Sridhar (P.W. 2) have stated that the incident took place about half an hour after sunrise, and nothing has been elicited in cross-examination to shake their testimony. Bachchu Lal (P.W. 5) has also stated that Jokhan and Munna went to the field "at the break of day", and the alarm was raised half an hour thereafter. His statement has also not been shaken in this respect. The learned Sessions Judge did not examine the evidence of these three witnesses while dealing with the question of the time of the incident and was swayed by the narration in the post-mortem reports that the intestines of the deceased were full

which showed that they had not answered the call of nature. From that circumstance, the trial Judge reached the conclusion that as the deceased would not have gone to the field without easing themselves, the incident might have taken place while it was still dark. The High Court has examined the evidence on the point and has given adequate reasons for taking the view that the occurrence would not have taken place in darkness because the sunrise time on July 2, 1965 was 5.15 a.m. and villagers go to plough their fields quite early in the summer season. The High Court has made a reference to the evidence of Bachchu Lal who was in a position to state the time when the deceased left his house for ploughing. It therefore appears that the trial Judge went wrong in reaching the conclusion that the incident might have taken place while it was still dark merely because the intestines of the deceased were found to be full. On the other hand the trial Judge lost sight of the evidence of Dr. J. Chandra, who was examined in the committing court, and had stated that the injuries of the deceased could have been sustained at 6 or 7 a. m. on the day of the incident. The direct evidence of Bachehu Lal (P.W. 5), Lalla (P.W. 1) and Sridhar (P.W. 2) had thus been corroborated by the evidence of the medical officer. There was also the fact that the time of sunrise was 5.15 a.m. The High Court was therefore justified in disagreeing with the finding of the trial Judge that the incident might have taken place while it was still dark, and had every justification for holding that that wrong impression was unreasonable and considerably affected the judgment of the trial Court in assessing the evidence of the eye-witnesses.

10. It will be recalled that it was Lalla (P.W. 1) who lodged the first information report at police station Wazirganj. He took the injured persons on cots and in "ekkas" to the police station, and it must have taken some time to make those arrangements. Then there was a distance of seven miles to cover but, even so, the report was lodged at 8.45 a.m. There was therefore no delay in making the report. It was an oral report, in which the incident was mentioned, along with the names of all the three appellants as the perpetrators of the crime and the names of three eye-witnesses namely, Lalla (P.W. 1), Sridhar (P.W. 2) and one Matai alias Matadin. It was also stated in the report that while all the accused were armed with "lathis" one had a "ballam", and that the deceased were beaten in Smt. Dharamraji's field. Lalla (P.W. 1) was therefore an important witness. His statement that he was ploughing his own field nearby, has been corroborated by the other evidence on the record which shows that he was the owner of field situated at a distance of not more than 200 steps from the place of the first beating and that his own field was found ploughed up to two "koondas". Nothing has been elibited in the cross-examination of Lalla to discredit his statement which is in accord with the first information report Ex.Ka-1. The trial Judge however took the view that as Lalla was the "next door neighbour of Bachchu Lal, and so he is bound to have sympathy, at least for Bachchu Lal." To say the least, that was a most unreasonable finding for the fact that Lalla was a neighbour went to show that he was a natural witness and was attracted to the scene of occurrence because he was cultivating his own field at the time of the incident. The trial Judge also lost sight of the fact that the appellants were not able to advance any reason why Lalla should have implicated them falsely in such a serious offence.

11.The trial Judge has rejected the evidence of Sridhar (P.W. 2) on the ground that he had a field of three or four biswas only, which was lying parat, and there was no reason for him to be in the field so early merely to uproot kanams and to cut grass. The trial Judge however lost sight of the fact that the prosecution had led evidence to prove that Sridhar's field was actually found dug out, up to an

area of about two biswas, which showed that he was actually working there at the time of the incident. Why Sridhar attached so much importance to such a small field and worked on it, was a matter of his choice but that could not, at any rate, justify the view that he was a false witness. It may be that he was friendly with Munna deceased, but there is no evidence to show that he was on inimical terms with the appellants and would have implicated them falsely. The High Court was therefore justified in taking the view that both Lalla and Sridhar were truthful witnesses', and that the trial Judge was unreasonable in rejecting their evidence for unsatisfactory reasons.

12. As has been stated, Mr. Anthony has argued that the statements of Lalla (P.W. 1) and Sridhar (P.W. 2) should be rejected because their version about the dragging of Munna and his dying declaration has not been mentioned in the first information report and does not accord with the medical evidence. The High Court has examined both these points, and has stated that the omission of these two matters in the first information report was a matter of no consequence because they were matters of detail. It may also be mentioned that as Lalla (P.W. 1) who made the report, was himself an eye-witness of the incident, it was hardly necessary for him to refer to any dying declaration of Munna to his father Bachchu Lal. It may be that Munna was not dragged from Molbu's field by one leg, as stated by Lalla (P.W. 1), and he might have been dragged otherwise, but it would be quite unreasonable to take the view that merely because there were only two abrasions on the shoulder of Munna the entire testimony of the eye-witnesses should be rejected because his back was not found sufficiently bruied by the so-called dragging. We have gone through the post-mortem report and it cannot be said that it discredits the evidence of eyewitnesses merely because there were only two abrasions on the scapular region. This is therefore not a case like Ram Narain's (supra) because in this case the prosecution evidence cannot be said to be "totally inconsistent" with the medical evidence.

13. The prosecution no doubt led evidence to prove the alleged dying declaration of Munna, to his father Bachchu Lal (P.W. 5), and it may be that Munna had received such injuries that he would have found it difficult to speak, but it cannot be said that the evidence on the record was such as to prove that it was impossible for him to inform his father who his assailants were. As has been shown the omission of the alleged dying declaration from the first information report is of no consequence because the report was made by an eyewitness. Even so, the High Court has not based its finding of conviction on the dying declaration.

14. The prosecution examined Rameshwar (P.W. 3) and Devi Singh (P.W. 9) as the persons who saw the accused running away towards the village soon after the occurrence. The trial Judge has rejected their tesimony because of a so-called discrepancy about the place, and for the reason that no attempt was made to apprehend them. The High Court has examined this aspect of the matter also and has explained that the discrepancy did not exist because Rameshwar (P.W. 3) stated that he was near the Bith tree when he saw the appellants running away while Devi Singh (P.W. 9) has stated that they were seen by him near the Phulwari. There was therefore no discrepancy in the statements, and it was unreasonable to reject their evidence merely because no attempt was made to apprehend the accused who, as has been stated were armed with lathis and spear. It is not without significance that the appellants did not find it possible to give any reason why Rameshwar and Devi Singh should have deposed against them falsely because there is no allegation of any enmity with them.

15. It has also been argued that the case of the prosecution deserves to be rejected because of its failure to examine Matai alias Matadin. It is true that the prosecution did not examine Matai alias Matadin but, as has been held by this Court in Masalti v. State of U.P. it would be unsound to lay down a general rule that every witness mentioned in the first information report must be examined by the prosecution in all circumstances and that the failure to do so would lead to the rejection of the evidence of all others.

16. Some criticism has been directed against the recoveries which were said to have been made by the Investigating Officer at the instance of appellant Bhagwati. The High Court has not placed reliance on that part of the evidence because it was satisfied that the other evidence was sufficient for the reversal of the finding of acquittal. Nothing could therefore turn on the alleged recoveries.

17. It would thus appear that as the finding reached by the trial Judge was clearly unreasonable, the High Court was justified in reversing it and in recording a finding of conviction. The appeal fails and is dismissed.