

## **Zahoor And Others vs State Of U.P. on 25 October, 1990**

**Equivalent citations:** AIR1991SC40, 1991CRILJ56, 1990(3)CRIMES556(SC), JT1990(4)SC207, 1990(2)SCALE813, 1991SUPP(1)SCC372, 1991(1)UJ159(SC), AIR 1991 SUPREME COURT 40, 1990 (4) JT 207, 1991 (1) UJ (SC) 159, 1991 CRIAPPR(SC) 8, 1991 SCC(CRI) 678, 1991 (1) SCC(SUPP) 372, (1991) EASTCRIC 33, (1991) 2 RECCRIR 65, (1991) 1 CRILC 236, (1991) ALLCRIR 83, (1991) 1 ALLCRILR 108, (1990) 3 CRIMES 556

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**Bench: S.R. Pandian**

ORDER

K. Jayachandra Reddy, J.

1. There are three appellants in this appeal and they figured as accused Nos. 1, 11 and 12 before the trial court. They along with nine other accused Nos. 2 to 10 were tried for offences punishable under Section 302 read with Section 149, Section 325 read with, Section 149, Section 323 read with Section 149 and 452 I.P.C. The trial court acquitted all the 12 accused. The State of U.P. preferred an appeal against the said order of acquittal and the High Court convicted the three appellants under Section 302 read with Section 149 I.P.C. and sentenced each of them to undergo imprisonment for life, under Section 323 read with Section 149 to undergo one year's R.I., under Section 325 read with Section 149 to undergo five year's R.I., and under Section 148 to further undergo 2 year's R.I. The acquittal of the rest of the accused was confirmed. In this appeal it is submitted that the FIR was lodged belatedly after due deliberations and the witnesses were all interested and their evidence ought not to have been relied upon by the High Court. The further submission is that the defence version namely that some unknown assailants committed dacoity in the house of the deceased on that night and caused the death of the deceased and also caused injuries to P.Ws, is probable, and that the prosecution witnesses have put forward the present story after due deliberations. To appreciate this contention it becomes necessary to state the prosecution case in brief.

2. The deceased, the accused and the material witnesses belong to Village Sidhapur in Barabanki District. The deceased Idris was a well-to-do man of the village, and his house was situated in the midst of the village. To the north of his house was the house of P.W.6 and to his east was the house of P.W.5. P.W. 1, his wife, also belongs to the same village. P.W.2 is the farm servant of the deceased and belongs to the same village. About a week prior to the occurrence the deceased had purchased

the tobacco field of one Ghulam Lodh and paid Rs. 300/- as earnest money. Ghulam Lodh, however, sold that plot subsequently to accused Nos. 1 and 9. In the morning of 8th March, 1967 at about 8 A.M. P.W.2, the farm servant of the deceased met Ghulam Lodh on the way and questioned him as to why he has sold the field to accused Nos. 1 and 9 and there was a verbal altercation between them. Apprehending an assault P.W.2 ran to the deceased and told him what had happened. Thereupon the deceased went to accused Nos. 1 and 9 and Ghulam Lodh. On return from them the deceased told his wife P.W.1 that accused Nos. 1 and 9 and Ghulam Lodh were bent upon a quarrel. At about noon, the deceased learnt that accused No. 1 and others were collecting persons. On hearing that the deceased called for his labourers. They, however, were busy in separating tobacco leaves from the stumps, inside the house. At about 5 P.M. when the deceased and his servant including P.W.2, his wife P.W.1 and his brothers P.W.8 and Moharram Ali were sitting on the Chabutra, about 20 men came there. One Putti the absconding accused was holding a handgrenade and a country-made pistol. On seeing the miscreants, those who sitting outside his house, ran inside and closed the eastern exit. But some of the miscreants climbed down the house and opened the exit. Thereafter all those, who were outside his house, also entered the inner courtyard. On seeing them the deceased, his son and two brothers ran to take shelter in the western kothri and closed the door. Some of the labourers including P.W.2, however, stayed in the inner courtyard. The miscreants assaulted the labourers in the courtyard. Thereupon they broke open the western side door and from there dragged the deceased and his two brothers and beat them with lathis. When P.W.1 rushed to the rescue of her husband, Chauhan accused No. 11, who is one of the appellants herein, caught hold of her. Because of severe beating the deceased fell down in the inner courtyard and accused No. 1, the first appellant herein, instigated the others to kill him. He placed bricks underneath the head of the deceased and accused Nos. 1 and 12, appellants Nos. 1 and 3 herein, holding a lathi on one side and accused No. 9 and Adharey, another assailant, holding it on the other side pressed the neck of the deceased by placing the lathi on the throat which resulted in the instantaneous death of the deceased. Thereafter the culprits ran away. The noise attracted P.Ws 5 and 6. They saw from their doors some of the labourers running away including P.Ws 2 and 4. Thereafter the dead body of the deceased was placed on a cot. P.W.1 dictated the report of the occurrence to P.W.11, a peon in the Sidhaur Block. The report was carried to the police station by the Chowkidar at about 2.30 A.M. and was delivered at about 7.55 A.M. the next morning. The Head Constable P.W.7 registered the crime and prepared the report. The Station House Officer, P.W.10 after receipt of the report rushed to the spot reaching there in the afternoon. He held the inquest and sent the dead body for postmortem. He examined the witnesses including P.W.1 and also sent the injured witnesses to the Doctor. P.W.3, the Doctor, conducted the postmortem. He found several abrasions and contusions all over the body. On internal examination he noticed the fracture of thyroid cartilage on both sides and fracture of Larynx. He opined that the death was due to asphyxia as a result of strangulation and on account of the pressure on the neck he specifically stated that the death could be caused if a lathi was pressed on the neck of the deceased from both sides. P.W.9, another Doctor, examined the injured witnesses. On Moharram AH, the brother of the accused who is not examined, the Doctor found 14 injuries namely abrasions and contusions all over the body. On Munney, another inmate who was not examined he noticed five injuries. On P.W.8 the Doctor found 13 injuries namely abrasions and contusions. The other labourers who received injuries were also examined by him. One Dr. Nagi examined P.W.2 and he found 15 injuries on him, a large number of them being contusions. P.W.4 was also injured and on him 15 injuries were found. After completion

of the investigation, the charge-sheet was laid. The prosecution examined 11 witnesses. Out of them P.Ws.1, 2, 4 and 8 figured as eye-witnesses and among them P.Ws 2, 4 and 8 are injured witnesses. The accused pleaded innocence and their main defence was they were falsely implicated. The trial court accepted the defence version that there was a dacoity in the house of the deceased and that the prosecution has not succeeded in proving the guilt, the time of occurrence and the manner of the execution of the crime beyond reasonable doubt and accordingly acquitted all the accused. The evidence of P.Ws 2 and 4 was rejected on the ground that the former was an employee of the deceased and later was a permanent labourer. He also discarded the evidence of P.W.8 on the ground that he is the real brother of the deceased. The learned Sessions Judge observed that the evidence of the eye witnesses was not consistent in naming the culprits in the statements made in the course of the investigation and in the evidence during the trial. The High Court, on the other hand, held that the specific overacts of the three appellants and two others Gajju and Adharey were established but Gajju died during the pendency of the appeal. Therefore the appeal was abated against him and Adharey died after the committal of the case. The High Court accordingly convicted these three appellants. With regard to the other accused they are given benefit of doubt by the High Court particularly to eliminate all possibilities of innocent men being roped in. The learned Judges took the view that specific overt-acts are attributed to these three accused and that their guilt is established beyond all reasonable doubt and accordingly convicted them.

3. In this appeal, as mentioned above, the learned Counsel submitted that there was delay in giving the earliest report and it was not lodged at the time mentioned in it but much later after due deliberations. P.W.1, the wife of the deceased, whose presence cannot be doubted at the scene of occurrence, dictated the report to P.W.11 at about 7.P.M. We have perused the evidence of P.W.11 and there are no grounds whatsoever to doubt his veracity. According to the entry in the general diary the report was handed over in the police station at about 7.55 A.M. Having regard to the nature of the occurrence and the commotion that would have been created during the night, one cannot expect the persons concerned to go to the police station on that very night. P.W.1 has asserted consistently that she handed over the report at about 2.30 A.M. to the Chowkidar and the same reached the police station at 7.55 A.M. which is about 6 miles away. Therefore, we agree with the High Court that there was no inordinate delay. At any rate mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication. We have perused the report. All the material particulars are mentioned and coming to the attack on the deceased it is clearly stated that accused No. 1 put bricks underneath the neck of the fallen deceased and then a lathi was kept on the throat and pressed from one end by accused Nos. 1 and 12 and from the other end by accused No. 9 and Adharey resulting in the death of the deceased. It can therefore be seen that it is clearly mentioned that the deceased died due to strangulation by pressing the lathi on the throat. If the eye-witnesses have not really witnessed this incident they could not have imagined about the cause of death by merely looking at the external injuries. The Doctor who conducted the postmortem found that the thyroid cartilage and Larynx were fractured because of the strangulation. The Doctor also corroborated this version namely that the asphyxia was caused due to strangulation by putting a blunt lathi and pressing the same on the throat. Therefore so far as this part of the occurrence is concerned, it can by no stretch of imagination be said that it is a fabricated one. Unless the witnesses were present and witnessed the occurrence they could not have imagined and mentioned the same in the earlier report. We therefore do not find any merit in this submission

namely that the earlier report is a fabricated one. The specific overacts attributed to accused Nos. 1 and 12 namely that they caught hold of the other end and pressed the same on the throat of the deceased, have been consistently mentioned right from the stage of giving the earlier report. There are absolutely no discrepancies and the High Court has carefully considered this part of the evidence and has rightly held that guilt of accused Nos. 1 and 12 is established beyond all reasonable doubts. So far as Chauhan, accused No. 11 is concerned, the only overtact attributed to him is that he prevented P.W.1 from going to the rescue of her deceased husband. The High Court noted that accused No. 11 did not physically participate but, however, found him guilty on the principle "they also serve who stand and wait".

4. Having carefully considered the facts and circumstances, we are of the view that the case of accused No. 11 is the same as that of other acquitted accused. At one stage the High Court observed "The overtact proved against a particular accused may reinforce the testimony of the witness." Having regard to the nature of the overacts attributed to accused No. 11 we think it may not be safe to convict him. Accordingly he is given benefit of doubt. The prosecution has proved that about 20 persons both identified and unidentified formed into an unlawful assembly. However, the conviction of appellants Nos. 1 and 3 (accused Nos. 1 and 12) Zahoor and Sant Ram does not warrant interference. In the result this appeal is allowed so far as Chauhan, second appellant (accused No. 11) is concerned and dismissed as against other two appellants Nos. 1 and 3 (accused Nos. 1 and 12) Zahoor and Sant Ram.