Ram Prasad And Others vs The State Of U.P on 17 September, 1973

Equivalent citations: 1973 AIR 2673, 1974 SCR (1) 650, AIR 1973 SUPREME COURT 2673, 1974 3 SCC 388, 1974 (1) SCR 650, 1974 (1) SCJ 683, 1973 SCC(CRI) 953, 1974 MADLJ(CRI) 369

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, A. Alagiriswami

PETITIONER:
RAM PRASAD AND OTHERS

Vs.

RESPONDENT:
THE STATE OF U.P.

DATE OF JUDGMENT17/09/1973

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
ALAGIRISWAMI, A.

CITATION:
1973 AIR 2673 1974 SCR (1) 650
1974 SCC (3) 388

ACT:
lndian Evidence Act-Whether every person who has seen the incident should be cited as a witness by prosecution in the criminal case-Duty of the prosecution to bring on record full and material facts.

HEADNOTE:
The appellants were convicted u/s 148 and 302 read with Sec. 149 of the I.P.C. The conviction was challenged in the Supreme Court, inter alia, on the ground that besides the eye witnesses, the F.I.R. mentioned the names of three more persons who had seen the incident but they were not examined by the prosecution. In rejecting the contention and dismissing the appeal.
HELD : Non-examination of some of the eye-witnesses

mentioned in the F.I.R. does not introduce any fatal infirmity to the prosecution case. It is no doubt true that the prosecution is bound to produce witnesses who are essential to the unfolding of the narrative on which the prosecution is based. Apart from that, it cannot be laid down as a rule that if a large number of persons are present at the time of the occurrence,. the prosecution is bound to call and examine-each and every one of those persons. The answer to the question as to what is the effect of the non-examination of a particular witness would depend upon the facts and circumstances of each case. In case enough number of witnesses have been examined with regard to the actual occurrence and their evidence is reliable and sufficient to base the conviction of the accused thereon, the prosecution may well decide to refrain from examining the other witnesses. Likewise, if any of the witnesses is won over by the accused party and as such is not likely to state the truth, the prosecution would have a valid ground for not examining him in court. The prosecution would not, however, be justified in not examining a witness on the ground that his evidence even though not untrue would go in favour of the accused. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on the record so that there may be no miscarriage of justice. The discharge of such a duty cannot be affected by the consideration that some of the facts if brought on the record would be favourable to the accused. In case the court finds that the prosecution has not examined witnesses for reasons not tenable or not proper, the court would be justified in drawing an inference adverse to he prosecution. [654F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 52 of 1970.

Appeal from the Judgment and Order dated the 10th October, 1969, of the Allahabad High Court (Lucknow Bench) Lucknow, in Criminal Appeal No. 48 of 1968).

K. B. Rohatgi, for the appellants.

O. P. Rana, for the respondent.

The Judgment of the Court was delivered by KHANNA, J. This is an appeal by special leave by Ram Prasad (65), his son Udit Narain (22) and their servant Sri Pal (22) against the judgment of the Lucknow Bench of the Allahabad High Court affirming on appeal the judgment of the Additional Sessions Judge Lucknow whereby the three appellants and three others, namely Sarju Putti and Jaganath had been convicted under section 148 and- section 302 read with section 149 Indian Penal

Code and had been sentenced to undergo rigorous imprisonment for a period of 18 months on the first count and imprisonment for life on the second count.

The occurrence giving rise to the present case took place on March 31, 1967 at 2.30 p.m. in front of and inside the tarwaha of the house of Jaskaran, father of Jagannath accused, in village. Gadarian Purwa at a distance of two miles from police station. Mandiaon. The person murdered during the course of the occurrence was Parmeshwar Din (35). The prosecution case is that Parmeshwar Din de--eased and Sita Ram (PW 4) purchased two plots of land situated in the area of village Gadarian Purwa from Paggu and others for Rs. 3,000 as per sale deed dated December 23, 1966. The possession of these plots had been taken by the vendees about one or two months earlier when they paid Rs. 500 as earnest money. The vendees sowed wheat in those plots. Sarju and Putti accused, who are both brothers, laid claim to, those plots. As Ram Prasad accused was an influential person, Sarju and Putti sought his assistance in obtaining the possession of the plots. Ram Prasad is also stated to have been assured by Sarju and Putti that in case they were successful in getting those two plots', they would give him half of the land.

On March 31, 1967, it is stated, Parmeshwar Din was getting the wheat crop standing in the two plots mentioned above harvested. The plots are at a distance of about 150 paces from the house of Jaskaran, father of Jagannath accused. Umrao (PW 1) as well as Sita Ram (PW 4) were also present in the fields along with Parmeshwar Din. The actual work of harvesting was being done by seven labourers, four of whom were women. The male labourers were Shankar, Baddal and Bubba. At about 2.30 p.m., it is alleged, Udit Narain accused came to Parmeshwar Din and told him that some persons were waiting for him in the abadi of Gadarian Purwa to have some talks with the deceased regarding the two Plots in dispute. Parmeshwar Din deceased then went with Udit Narain. Shortly thereafter, Umrao and Sita Ram PWs heard the cries of Parmeshwar Din. On looking towards the house of Jaskaran, they found that the six accused had surrounded Parmeshwar Din and were giving bank a blows to him in front of that house. The six accused then dragged Parmeshwar Din deceased inside the tarwaha which had a thatched roof. The tarwaha had one shutterless opening. Umrao and Sita Ram then ran towards the tarwaha and stood close to the opening of the tarwaha. The labourers engaged in harvesting also followed Umrao and Sita Ram to that place. Chandrika (PW 2) and Mohan (PW 3) were passing that way at that time. Both of them on hearing alarm also came there and saw the accused giving banka blows to Parmeshwar Din. Umrao and others shouted to the accused not to kill Parmeshwar Din, but they too were threatened by the accused. The accused thereafter ran away. Umrao and Others then went inside the tarwaha and. found Parmeshwar Din lying dead in a pool of blood. A number of persons then collected 'there.

Umrao got report Ka-1 written by his son Hari Prasad. Umrao thereafter went to police, station Mandiaon and lodged there report Ka-1 at 5.30 p.m. Station Officer Tiwari (PW 11) was not present at the police station at the time he report was lodged. On being informed about the lodging of the report, the Station Officer went to the place of occurrence and arrived there at 6.30 p.m. The Station Officer on arrival recorded the statements of Umrao, Sita Ram and Mohan PWs and prepared inquest report relating to the dead body of the deceased. The body was thereafter sent to the mortuary where post mortem examination was performed by Dr. Jaitle on April 1, 1967. Out of the appellants, Udit Narain and Sri Pal were arrested ,on April 7, 1967, while Ram Prasad surrendered

in court on April 14, 1967.

The six accused in their statements denied the prosecution allegations about their having participated in the assault on Parmeshwar Din deceased. Sarju and Putti also denied the prosecution allegation that Parmeshwar Din and Sita Ram had purchased the land in question and had brought the same under cultivation. The case of Ram Prasad and Udit Narain was that they had been falsely involved in this case 'because of the enmity of Sita Ram PW with whom, according to these accused, Ram Prasad had an altercation on an earlier occasion.

The trial court accepted the prosecution case and convicted and ,sentenced the six accused as mentioned above. The judgement of the trial Court was, as already stated, affirmed on appeal by the High Court.

In appeal before us, Mr. Anthony on behalf of the appellants has assailed the conviction of the accused-appellants on the ground that the evidence adduced by the prosecution in this case is not reliable and suffers from infirmities. As against that, Mr. Rana on behalf of the State has canvassed for the correctness of the view taken by the High Court. It cannot be disputed that Parmeshwar Din deceased was the victim of a murderous assault. Dr. Jaitle, who performed post mortem examination on the dead body of Parmeshwar Din, found as many as 23 injuries on the body, out of which 18 were incised wounds, One of the incised wounds had resulted in cutting the occipital bone and another had resulted in cutting the frontal bone. The incised injuries, in the opinion of the doctor, had been caused by some heavy sharp- edged weapon. The death of the deceased was due to shock and haemorrhage resulting from the head and neck injuries. The injuries were sufficient in the ordinary course of nature to cause death.

According to the prosecution case, the injuries found on the body, of the deceased had been caused by the six accused, including the three appellants. The prosecution, in order to substantiate that allegation, examined Umrao (PW 1), Chandrika (PW 2), Mohan. (PW 3) and Sita Ram (PW 4) as eye witnesses of the occurrence These witnesses supported the prosecution case as given above. The trial court, on consideration of the material on record, accepted the evidence of the four eye witnesses. On appeal the learned Judges of the High Court again examined that evidence and found the same to, be convincing. Nothing cogent has been brought to our notice as may justify interference with the concurrent findings of the trial court. and the High Court arrived at as a result of the appraisement of the evidence of the four eye witnesses.

It has been pointed out that the statement of Chandrika was, recorded during the investigation of the case 25 days after the occurrence, and as such, not much reliance can be placed upon the testimony of this witness. In this respect we find that the evidence of Chandrika shows that on the morning of the day following the,occurrence, he went to Muzaffarpur in district Barabanki where his father-in-law was lying ill. The witness stayed in Muzaffarpur for about six days and thereafter returned to his village. In the meanwhile, Sub- Inspector Tiwari had gone back to the police station. The SubInspector subsequently called the witness and recorded his statement on April 25, 1967. Chandrika's name as an eye witness of the occurrence had been mentioned in the first information report which was lodged within about three hours of the occurrence. In the circumstances, the delay

in recording the police statement of Chandrika by the investigating officer would not justify rejection of Chandrika's testimony. In any case, we find that apart from the statement of Chandrika, the prosecution case is also supported by the evidence of' other three eye witnesses. So far as these witnesses are concerned, their statements were recorded by the investigating officer soon after he arrived at the place of occurrence.

Argument has also been advanced on behalf of the appellants that there, is no mention in the first information report that injuries were caused to Parmeshwar Din deceased by the accused before the deceased was dragged inside the tarwaha, while, according to the evidence of the eye witnesses in court, the injuries to the deceased' were caused by the accused both before he was dragged as well-as inside the tarwaha. Reference to the first information report shows- that it is recited therein that the deceased was dragged and given banka blows by the accused. The omission to make an express mention in the first information report that banka blows were given to the deceased before he was dragged inside the tarwaha would not in the circumstances, in our opinion, make much material difference. Assuming that banka blows were caused to the deceased inside the tarwaha, this fact would not exculpate any of the accused. The accused at the time of the occurrence were armed with bankas. They dragged the deceased inside the, tarwaha and gave banka blows to him. It is plain that the injuries were caused to the deceased prosecution of the common object of all the accused to cause death of the deceased. The appellants, in the circumstances, car derive any benefit from the inability of the prosecution witnesses .state as to which particular injury was caused which of the accused.

It has also been argued that the evidence of the eye witnesses is of partisan character and, therefore, It is not safe to base the conviction ,of the accused upon that evidence. We find it difficult to accede to this contention beause the trial court and the High Court while appraising the evidence of these witnesses, considered all the features ,of the case and came to the conclusion that the evidence of the witnesses was trustworthy and reliable. We find no cogent ground to take a different view.

Considerable stress has been laid by Mr. Anthony upon the fact ,that, besides the four eye witnesses who have been examined in this case, the occurrence, according to the first information, report, had also been witnessed by Baddal, Shankar and Hubba. These persons were, however, not examined as witnesses at the trial. It is also pointed out that in addition to these persons, the occurrence was also ,witnessed by Sham Lal and Hubba (this Hubba is different from Hubba whose name was mentioned in the first information report), who also arrived at the scene of occurrence. Sham Lal and Hubba too. were not examined as witnesses. The non- examination of these witnesses, in our opinion, would not introduce an infirmity fatal to the prosecution case: It is no doubt true that the prosecution is bound to produce witnesses who are essential to the unfolding of the nar- rative. on which the prosecution is based. Apart from that, it cannot be laid down as a rule that if a large number of persons are present at the time of the occurrence, the prosecution is bound to call and ;examine each and every one of those persons. The answer to the ,question as to what is the effect of the non-examination of a particular witness would depend upon the facts and circumstances of each case. In case enough number of witnesses have been examined with tregard to the actual occurrence and their evidence is reliable and .sufficient to base the conviction of the accused thereon, the prosecution may well decide to refrain from examining the other witnesses. Like-wise, if any of the

witnesses is won over by the accused party and as such is not likely to state the truth, the prosecution would have a valid ground for not examining him in court. The prosecution would not, however be justified in not examining a witness on the ground that his evidence even though not untrue would go in favour of the accused. It is as much the duty of prosecutor as of the court to ensure that full and material facts are brought on the record so that there may be no miscarriage of justice. The discharge of such a duty cannot be affected by the consideration that some of the facts if brought on the record would be favourable to the accused. In case the court finds that the prosecution has not examined witnesses for reasons not tenable or not proper, the court would be justified in drawing an inference adverse to the prosecution.

So far as the present case is concerned, we find that the prosecution has examined four eye witnesses of the ence and their evidence has been found by the trial court and the High Court to be reliable, convincing and sufficient to warrant the conviction of the accused. It has not been shown to us that the evidence of the persons who were not examined as witnesses was essential for the unfolding of the narrative on which the prosecution was based. The present is not a case wherein the witnesses not examined could have given evidence on a point regarding which the witnesses actually examined were not in a position to depose. We are, therefore, of the view that the failure of the prosecution to examine the persons mentioned above as witnesses would not justify interference with the judgments of the High Court and the trial court.

The appeal fails and is dismissed,
S.B.W. Appeal dismissed.
2- L392SupCI/74