

Mohan Lal And Anr. And Raghbir Singh vs Delhi Administration on 23 September, 1969

Equivalent citations: 1969(1)UJ690(SC)

JUDGMENT

Hedge, J.

1. These appeals by special leave arise from the common trial in Sessions Case No. 20 of 1967 on the file of the Additional Sessions Judge, Delhi wherein the appellants were tried for offences under Sections 302/34, 307/34 and 325/34 I.P.C. The trial Judge acquitted, accused Mohan Lal and Raj Singh of all the offences with which they were charged but convicted accused Raghbir Singh under Sections 302, 307 and 325, I.P.C. and sentenced him to death under the murder charge awarded him 7 years rigorous imprisonment for the offence under Section 307, I.P.C. and 3 years rigorous imprisonment for the offence under Section 325, I.P.C. As against the acquittal of Mohan Lal and Raj Singh, the State went up in appeal. At the same time Raghbir Singh went up in appeal against his convictions. The High Court of Delhi allowed the State appeal and substantially rejected the appeal of Raghbir Singh. It convicted all the accused for the offences with which they were charged. For the offence under Section 302/34, I.P.C. all the accused were sentenced to imprisonment for life, under Section 307/34, they were sentenced to suffer rigorous imprisonment for 7 years and under Section 325/34, I.P.C. they were sentenced to suffer rigorous imprisonment for 3 years. The several sentences were ordered to run concurrently. All the accused have come up in appeal against the decision of the High Court.

2. The prosecution case is that there was bitter enmity bet between Sunder Lal and the members of his family and deceased Lal Chand, P.W.4 Chatar Singh and some others for a period of over 14 years prior to the present occurrence. As between the two parties there were various proceedings including criminal cases. On April 16, 1967 one Mir Singh, one of the supporter of deceased Lal Chand filed a complaint before the police alleging that Sunder Lal had beaten him and threatened to kill him. On the basis of this complaint Sunder Lal was arrested at about 4 p.m. on April 20, 1967.

On the same night at about 8 p.m. when the deceased Lal Chand, Chatar Singh, (P.W.4) and Leelu (P.W.5) were going towards Nare-

la and when they were near the house of one Sarupa Mahajan, Raghbir Singh came driving the lorry of Sunder Lal from behind.

Behind the driver's seat, in the open space were standing Mohan Lal and Raj Singh; seeing Lal Chand and Chatar Singh, Mohan Lal and Raj Singh shouted to Raghbir Singh 'Dont' let Chatru and

Lal Chand go and kill them by crushing beneath the truck. You won't get such an opportunity; they have got Sunder Lal arrested again".

On being so instigated Raghbir Singh chased Lal Chand and Chatar Singh. Hearing the cries of Mohan Lal and Raj Singh, Lal Chand and Chatar Singh tried to save themselves by running towards the open space by the side of Chabutra of Sarupa Mahajan. Seeing them running away from the road Raghbir Singh turned his lorry towards the open space and pursued them in that open place and with a view to get at them he knocked off a portion of the Chabutra of Sarupa Mahajan and thereafter ran over Chatar Singh, Lal Chand and Leelu as a result of which Lal Chand died later in the night in the Irwin Hospital. Both Chatar Singh and Leelu sustained serious injuries. The further case of the prosecution is that at about the time of the occurrence P.W.1, Goverdhan and P.W.3, Ram Sarup were coming from Narela side and that they witnessed the occurrence; soon after the occurrence P.W.6. Dharman and several others came there. It is said that the first Information in this case was laid by P.W.1, Goverdhan shortly after the occurrence.

3. The accused pleader alibi. They said they were not in the lorry in question at the time of the occurrence. Their case is that they have been falsely implicated in the case by P.Ws. 1,3,4, 6 and the investigating officer, Dasondha Singh, due to enmity.

4. The trial court substantially accepted the evidence of P. . Ws.1 and 3 but felt unable to rely on their testimony relating to the alleged instigation by Mohan Lal and Raj Singh. In the result it convicted Raghbir Singh as mentioned earlier and acquitted Mohan Lal and Raj Singh. The High Court felt that it could safely rely on the evidence of those witnesses even as regards the alleged instigation by Mohan Lal and Raj Singh. In the result it convicted all the accused as mentioned earlier. At this stage we may mention that P.W.5. Leelu did not support the prosecution case. It is clear that he had turned hostile to the prosecution. Therefore the courts below were right in not placing reliance on his testimony; but in doing so, the High Court overlooked one important aspect in his evidence. He had specifically deposed that he did not hear shouts from Mohan Lal and Raj Singh that Chatru and Lal Chand should be killed. This part of his evidence receives considerable support from his statement under Section 164, Cr.P.C. (Exh.P.5-B). At the time he was examined before the Magistrate under Section 164, Cr.P.C. he was undoubtedly supporting the prosecution case. Therefore the circumstances that he did not speak about the alleged instigation is of considerable importance. On the basis of the police records, the learned magistrate who examined him under Section 164, Cr.P.C. appears to have questioned him about the alleged instigation. Evidently in answer to that question he stated "I did not hear from behind any shout 'mar do, mar do'". It is also necessary to mention at this stage that Sarupa Mahajan in front of whose house, the incident took place had been put forward as an occurrence witness. He was cited as a witness in the charge sheet. But he was given up on the ground that he had turned hostile to the prosecution. But the curious part of the case is that during the trial of the case, a deliberate attempt was made to show that he had not witnessed the occurrence.

5. In the First Information P.W. 1 stated that at the time of the occurrence he and Ram Sarup raised an alarm. On hearing their cries, Singh Ram; Jit Ram, Ram Narain, Bhagwana came to the spot. It is further stated therein "Many other persons also started gathering there". None of the

aforementioned witnesses except Singh Ram has been examined in the case. No explanation is forthcoming for their non examination.' Even Singh Ram was not examined as a witness. He was merely offered for cross-examination. In the evidence it is made cut that P.W.6, Dharman was the first to arrive at the scene of occurrence. But it is significant that his name is not mentioned in the first Information.

6. It is clearly established that there was bitter enmity between the accused party and the party of Chatar Singh and Lal Chand. That fact is amply borne out by the documentary and oral evidence adduced in this case. The parties are agreed on that part of the case. Therefore it is unnecessary to refer to the evidence relating to that aspect. It is also satisfactorily established that on the day of the occurrence at about 4 p.m., Sunder Lal was arrested on the basis of the complaint given by Mir Singh, P.W.9.

7. It is proved that the lorry that ran over Chatar Singh, Lal Chand and Leelu was that of Sunder Lal. That lorry was gene-rally used to carry stones. One Shiv Ram was its driver. But according to the prosecution that lorry was also being driven by Moban Lal, Raj Singh and Raghbir Singh at times.

8. The fact that Lal Chand, Chatar Singh and Leelu sustained injuries as a result of being run over by Sunder Lal's lorry at about 8 p.m. on April 20, 1967 near the house of Sarupa Mahajan was not disputed. It was also not disputed that Lal Chand died as a result of the injuries sustained by him during that incident.

9. We have also no doubt in our mind that the person who drove the lorry in question on that evening deliberately attempted to murder Lal Chand and Chatar Singh. The lorry in question which had been abandoned at the place of the incident when examined by an expert was found to be ia fit condition in every respect. The tyre marks showed that the lorry was swerved from the road to the open space and it proceeded several yards, before Chatar Singh was knocked down. In order to knock down Chatar Singh it became necessary for the driver to take it so close to the house of Sarupa Mahajan as to knock out the edge of his Chabutra. Taking into consideration the facts that the lorry belonged to Sunder Lal, that there was bitter enmity between Sunder Lal and the members of his family with Chatar Singh and Mohan Lal, that Sunder Lal had been arrested on that very evening on a complaint given by one of the supporters of Lal Chand, that the lorry was diverted from the road and driven over 24 ft. in the open space before knocking down Chatar Singh and Lal Chand, it is reasonable to conclude that summons belonging to the party of Sunder Lal had deliberately tried to run over and kill Chatar Singh and Lal Chand.

10. But the real difficulty arises when we come to determine as to who is the person that drove the lorry on that evening. As mentioned earlier the lorry was being usually driven by its driver, Shiv Ram. But he was not likely to have the necessary animus to kill Lal Chand and Chatar Singh, Hence it is more likely that one or more of the close relations of Sunder Lal might have committed the heinous offence. From this stage onwards we must pass on from probabilities to evidence. The trial court which had the benefit of seeing the witnesses in the box had the benefit of see the witnesses in the box, was unable to place reliance on the testimony of P.Ws 1, 3 and 4 when they spoke to the instigation by Mohan Lal and Raj Singh. It may be noted that according to these witnesses as soon

as Mohan Lal and Raj Singh saw Lal Chaud and Chatar Singh, both of them simultaneously cried out to Raghbir Singh to run over Lal Chand and Chatar Singh. In the First Information P.W. 1 Goverdhan purported to mention the exact words used by Mohan Lal and Raj Singh. According to him they uttered the following words :

"Both these persons namely Chatru and Lal Chand say that they have got confined Sunder Lal again today. It is, therefore, the opportunity. Crush Chatru and Lal Chand beneath the truck and kill them. Such an opportunity will -not be found again."

He supported this version in his evidence. P.W.3, substantially supported that version The trial court thought that it is not safe to rely on that part of the testimony of P.Ws. 1 & 3. In its opinion it was most unlikely that both Mohan Lal and Raj Singh would have within a split second simultaneously reacted in the same manner and would have uttered the identical words and further it opined that it is not likely that P.Ws. 1,3, and 4, who unexpectedly heard shouts from a lorry which was being driven at a considerable speed could have made out the exact words of the persons shouting. We shall presently consider to what extent reliance can be placed 'on the testimony of P.Ws. 1,3 and 4. That apart, in our opinion, the appreciation of evidence made by the trial court relating to the alleged instigation by Mohan Lal and Raj Singh is by no means an unreasonable one. At any rate it is not such as to call for interference at the hands of the appellate court. It is well settled that if two reasonable conclusions can be reached on the basis of the evidence on record, the trial court's finding of acquittal should not be interfered with by the appellate court. Strangely enough the High Court has made out a new case for the prosecution. It did not accept the assertion of the prosecution witnesses as to the exact words used by Mohan Lal and Raj Singh. It thought that they must have used some words on the basis of which, the witnesses came to the conclusion that they instigated Raghbir Singh to kill Lal Chand and Chatar Singh. But in doing so, the High Court not only overlooked the evidence adduced in the case but it also lost sight of the fact that two persons were charged for abetting the offences in question. Unless there is a clear and positive evidence that the words used by both of them amounted to abetment, they could not be convicted. Once the High Court came to the conclusion that the evidence of the prosecution witnesses cannot be relied upon for finding out the exact words used by Mohan Lal and Raj Singh, it was really hazardous for that court and on the circumstances of the case to fix the responsibility in the matter of abetment. We are also of opinion that the evidence relating to abetment is very artificial. We shall presently notice that P.Ws. 1,3-4 and 5 are partisan witnesses. They have not hesitated to change their version in material respect to suit the prosecution case. On their own showing they are unreliable witnesses. It is hardly believable that in a case like the present one where the entire occurrence took place within seconds, any passer by could have distinctly made out the exact words uttered by persons inside the lorry. Taking all the aspects of the case into consideration, we are of opinion that the evidence relating to the instigation by Mohan Lal and Raj Singh is not trustworthy. The possibility of their being falsely implicated cannot be safely ruled out.

11. This leaves us with the case against Raghbir Singh. The real question is whether there is satisfactory evidence to show that at the time of the incident Raghbir Singh was driving the lorry. For convicting Raghbir Singh neither the trial court nor the High Court depended on the testimony of P.W. 4, Chatar Singh. They were of the opinion that it is unsafe to rely on his testimony as he was

a bitter enemy of the family of Sunder Lal and Mohan Lal. We are of opinion that no reliance can be placed on the evidence of Chitar Singh for the purpose of finding out the person who drove the lorry at the time of the occurrence. It may be recalled at this stage that the incident took place at about 5 p.m. It was quite dark then. Both the lorry and the injured were travelling in the same direction. The lorry was behind those persons. Lal Chand, Chatar Singh and Leelu were walking on the left side of the road, on the kacha portion. The headlights of the lorry were on. A feeble attempt was made to show that the light near the driver was burning when the lorry was being driven. For this, we have only the testimony of P.W. 1 who, as we shall presently see, is a bitter enemy of Sunder Lal and his family. Neither P.W. 3, nor P.W. 4, support that version. Usually that light is not put on when the vehicle is being driven. According to P.W. 4, on hearing the shouts from behind he saw the lorry chasing them and hence he and his companions ran towards the open space. Under those circumstances it is most unlikely that he would have identified the driver who was sitting on the right side of the lorry. It may be noted that on sustaining injuries P.W. 4 became unconscious. He was examined by the police only on the 22nd. By that time a complaint implicating all the accused had been given by P.W. 1. Therein Raghbir Singh was mentioned as the person who was driving the lorry. There was a ready made case before him which is likely to have suited his purpose. Hence there is nothing surprising in his adopting that story.

12. Before we take into consideration the evidence of P.Ws. 1 and 3, we may refer to the evidence P.W. 6, Dharman. We have earlier mentioned that the name of this witness does not find a place in the First Information. According to P.W. 1 he was the first to arrive at the scene and that he had mentioned his name to the police when he gave the first information but he does not know why the same is not mentioned therein though the names of other persons who came later are shown therein. P.W. 1 is contradicted by the investigating officer on this part of his evidence. We are satisfied that P.W. 1 was not telling the truth when he deposed that he had mentioned the name of Dharman at the time he gave the complaint. P.W. 6, Dharman is proved to be a bitter enemy of Sunder Lal and the members of his family. His alleged appearance at the scene as the incident was taking place is highly doubtful. Further he has the impudence to assert that after running over Lal Chand, Chatar Singh, and Leelu and when the accused were running away from the scene of occurrence, when questioned by him they confessed to him that they have killed Lal Chand and Chatar Singh. This shows the extent to which this witness is prepared to go. This part of his evidence was not accepted either by the trial court or by the High Court. It was not commended for our acceptance. We are inclined to believe that this witness is a false witness and he has come forward to depose falsely against the accused due to enmity.

13. This takes us to the evidence of P.Ws. 1 and 3. It is clear from the admissions made by P.W. 1 in his cross examination that he is a bitter enemy of Sunder Lal and Mohan Lal. He had been their enemy at least from 1965. He had petitioned against Sunder Lal on several times. On an application made by Mohan Lal he was summoned by a magistrate and admonished. He made a complaint to the Custodian against Sunder Lal in October, 1966. He was a witness against Sunder Lal and Mohan Lal in a criminal trespass case and again in a proceeding under Section 107, Cr. P.C. It is hard to believe that since a person by sheer coincidence chanced to be at the scene when the occurrence took place. According to him at the time of the occurrence he was returning to his village Bankner. Criminal Courts are familiar with way farer witnesses. Their evidence is generally viewed with

suspicion. It should be more so if the witness happened to be an enemy of the accused. We have earlier held that his evidence relating to instigation by Mohan Lal and Raj Singh is artificial and unacceptable. We have also discarded his testimony as regards the arrival of Dharman to the scene very soon after the occurrence. We are not convinced that P.W. 1 was present at the scene when the occurrence took place. It is not unlikely that his assistance was procured to build up a case against the accused. One could easily visualise the anxiety of the enemies of Sunder Lal and Mohan Lal to implicate as many members of their family as possible in the case. For obvious reasons they could not implicate Sunder Lal because he was in police lock up at the time of the occurrence. Three of the adult male members of their family have been charged with the offences mentioned earlier. We do not know whether there are any other adult members in that family. In such circumstances the possibilities of false implication must be guarded against.

14. We now come to the testimony of P.W.3, Ram Sarup, the only other witness examined to speak to the occurrence. We have already given our reasons for not relying on his testimony relating to the alleged instigation by Mohan Lal and Raj Singh. He also spoke to the fact that P.W.6, Dharman came to the scene of occurrence immediately after the occurrence. We have given our reasons for not relying on that part of his testimony. He admits that he did join in one or two petitions against the Gram Panchayat and its Pradhan, Sunder Lal. He stated that he did not remember if he had joined in any petition against Sunder Lal even after the Panchayat elections in 1966. He also stated that he did not remember if he gave evidence to rebut certain allegations made by Sunder Lal. The evidence discloses that in the village Banker, there are two parties, one led by Sunder Lal and the members of his family and the other opposed to it, the latter group undoubtedly included deceased Lal Chand, P.W.4, Chatar Singh, P.W.1 and P.W.6. The allegation of the accused that P.W.3 was also a member of that group receives support from the facts elicited from P.W.3 during his cross examination. P.W.3 appears to be an unreliable witness we have earlier seen that Sarupa Mahajan was originally put forward as an occurrence witness but he was later given up on the ground that he had turned hostile to the prosecution. The prosecution which had originally put him forward as a person who had witnessed the occurrence later made deliberate attempts to show that he did not witness the occurrence at all. P.W.3 in his statement under Section 162; Cr.P.C. had stated that Sarupa Mahajan had witnessed the occurrence but during his evidence in court he went back on that statement and evidently with a view to toe the prosecution line swore to the fact that Sarupa Mahajan did not witness the occurrence and that he came to the scene only after the occurrence was over. When he was confronted with his statement under Section 162, Cr.P.C. he went to the extent of saying that he did not know whether his statement was recorded by the police. He further asserted that he did not tell the police that Sarupa Mahajan had also witnessed the occurrence. The investigating officer who recorded his statement deposed that P.W.3 had stated before him that Sarupa Mahajan had witnessed the occurrence. It is clear from the evidence of P.W.3, that he was out to support the prosecution case without regard for truth. Under these circumstances we do not feel it safe to rely on his testimony.

15. On a careful examination and analysis of the evidence on record we are convinced that the High Court and the trial court did not test the evidence of P.Ws. 1, 3, 4 and 6 by the usual standard. They appear to have accepted them at their face value, as a result of which there may be grave injustice if their verdict is accepted.

16. For the reasons mentioned above we are of opinion that there is no reliable evidence on the basis of which we can safely come to the conclusion that the lorry in question was driven by Raghbir Singh at the time of the occurrence. Under these circumstances we are constrained to give him the benefit of doubt and acquit him.

17. In the result these appeals are allowed. The appellants in both the appeals are acquitted They shall be set at liberty forthwith.