Abdul Razaq vs Nanhey And Ors. on 22 November, 1983

Equivalent citations: AIR1984SC452, 1984CRILJ185, 1983(2)SCALE907, 1984SUPP(1)SCC15, AIR 1984 SUPREME COURT 452, 1984 SCC(CRI) 384, 1984 CRIAPPR(SC) 237, 1984 CURCRIJ 60, (1984) SC CR R 98, (1984) ALLCRIC 20, (1984) 1 CRIMES 332

Bench: E.S. Venkataramiah, O. Chinnappa Reddy, S. Murtaza Fazal Ali

JUDGMENT

1. This is an appeal by special leave against the judgment of the High Court acquitting respondents Nanhey and Bandu of the charges under Sections 302/34 and 201 of the Indian Penal Code.

2. The prosecution case has been detailed in the judgment of the trial court and the High Court and it is not necessary for us to repeat the same. The trial court considered all aspects of the case and believed the evidence of P.Ws. 1, 2 and 4 as also other circumstances proved in the case. It found accused Nanhey and accused Bandu guilty of offences punishable under Section 302/34 and Section 201 of the Indian Penal Code and sentenced accused Nanhey to death for the offence punishable under Section 302/34 and accused Bandu for imprisonment for life for the same offence. Both of them were sentenced to three years' rigorous imprisonment for the offence punishable under Section 201 of the Indian Penal Code. The High Court was unable to find any vital discrepancy and infirmity in the evidence of P. Ws. 1, 2 and 4 and therefore frankly acknowledged that all these witnesses had no reason to implicate falsely the accused. In this connection the High Court observed as follows:

> It is true that prima facie there is nothing on record to show that any of these witnesses had any motive to falsely implicate these two appellants but at the same time it is also true that even if the witnesses appear to be independent their statements are not to be necessarily accepted by the Court. The mere independence of the witnesses is not the only thing to be considered by the Court....
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> Having thus considered the various aspects of the prosecution story what we find is that although the three eye witnesses had no reason to falsely implicate the appellant yet their testimony cannot inspire confidence.

3. The High Court, therefore, was clearly of the opinion that so far as prosecution witnesses are concerned, it was consistent and there was no reason for them to falsely implicate the accused. Having given this finding the High Court proceeded to consider certain unimportant circumstances in order to disbelieve the version given by the witnesses. One of the circumstances was that according to the prosecution the head of the deceased was chopped of and there were two incised injuries but no explanation was given by eye witnesses for these injuries. This in our opinion is not a circumstance which is sufficient to discredit the prosecution case. It is clearly proved that the eye

witnesses had witnessed the occurrence from some distance and they have given full details about the manner in which the head of the deceased was chopped of. Further in the process of chopping of the head of the deceased it is quite possible that two grievous injuries might have been inflicted. It seems that due to this circumstance alone the High Court had viewed the case with grave suspicion. Another circumstance relied on by counsel for the respondents was that since P. W. 5, the father of the deceased had not given out the names of the accused before the Police, it should be assumed that the case that the eye witnesses had told the story to P.W. 5 when he came to the scene of occurrence and that the eye witnesses were present when the incident took place could not be believed. This argument cannot be accepted because the evidence of P.W. 1 clearly shows that he had seen the occurrence and shouted to the passers by on the road to inform the family members of the deceased that Bundu and Nanhey respondents herein had killed the deceased and had taken away his head after severing the same. This version of the eye witness came to light at the earliest opportunity. 5 Moreover so far as P.W. 5 is concerned, he has clearly stated in his evidence that the eye witnesses narrated the entire incident to him. No. question was put by the respondents (accused) regarding the names of accused persons being revealed to him. The counsel for the respondents did not put any such question to P.W. 5 lest the whole thing may be cleared and he may have no ground to defend the accused. Another argument put forward by counsel for the respondents was that the F.I.R. was lodged at 2.00 P.M. although the occurrence is said to have taken place at about 11.00 A.M. We must appreciate that in the case of such a gruesome murder as this the witnesses who must have been stunned by the chopping of the head of the deceased might have taken some time to recover themselves and to go to the police station which was 4 1/2 miles away from the place of occurrence. Having regard to this circumstance, it cannot be said that there was any unexplained delay in lodging the information with the Police. Another point raised by counsel for the respondents was that from the post-mortem examination it appears that the deceased had not taken any food on the date of the incident and it must, therefore, be presumed that the deceased must have left for the market place during early hours before taking food because that alone could explain the absence of food in the stomach. This is a pure speculation and it is also possible that the deceased may not have taken anything at all before leaving the home for market place at about 10 A.M. as there was sufficient opportunity for him to take his food later after reaching the market and selling the cloth which was his business. Similar other points of very little consequence have been raised by counsel for the respondents as also relied on by the High Court in disbelieving the evidence of prosecution witnesses. We have gone through the entire evidence of P.Ws. 1, 2 and 4 and we are unable to find any vital discrepancy or infirmity in the evidence of these witnesses which is consistent, straightforward and cogent in all respects. Where the witnesses are not interested and where there is no motive for false implication there must be strong grounds to disbelieve them. The High Court was fully aware of this rule of appreciation of evidence and therefore it tried to bank upon some minor discrepancies in the case which have been mentioned above. On the other hand the trial court had considered the evidence of all the witnesses and the circumstances of the case and had given good reasons for accepting the evidence of the eye witnesses which the High Court disbelieved wrongly without adequate reasons for doing so.

4. On a consideration, therefore, of the evidence of the eye witnesses and the circumstances of this case we are fully satisfied that the prosecution case has been proved against the respondents beyond reasonable doubt. The approach of the High Court was clearly wrong and with due deference we are

constrained to observe that it was absolutely perverse. There was no question of there being two opinions in the case on the evidence led by the prosecution. The only conclusion that could be reached was what was held by the trial court. In these circumstances, therefore, we allow this appeal, set aside the judgment of the High Court and restore the conviction under Section 302/34 of the Indian Penal Code recorded by the trial court. In the circumstances of the case we do not impose the extreme penalty of death but we sentence each of the respondents to imprisonment for life for that offence. We also convict each of them under Section 201 of the Indian Penal Code and sentence each of them for three years' rigorous imprisonment which was given by the trial court. Both the sentences shall run concurrently. The warrants of arrest will be issued so as to take the accused Nanhey and Bundu into custody to serve the remaining period of sentence. The appeal is allowed accordingly.