Rajaram And Others vs State Of M.P. on 31 July, 1992

Equivalent citations: AIR1994SC846, 1992(2)CRIMES1163(SC), JT1992(4)SC290, 1992(2)SCALE103, (1992)3SCC634, 1992(2)UJ586(SC), AIR 1994 SUPREME COURT 846, 1992 CRILR(SC MAH GUJ) 568

Bench: P.B. Sawant, N.P. Singh

ORDER

K. Jayachandra Reddy, J.

1. This appeal has been filed under Section 379 Cr.P.C. and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The five appellants before us arc the original accused Nos. 1, 2, 3, 8 and 10. They alongwith others were tried by the Sessions Judge, Narsinghpur for the offences punishable under Sections 148 and 302 read with Section 149 I.P.C. The prosecution relied on the evidence of the three eye-witnesses but the learned Sessions Judge acquitted all of them holding that there are certain discrepancies in the version of the eye-witnesses and therefore they are unreliable. The State preferred an appeal and the High Court in the impugned judgment convicted the five appellants under Sections 147 and 302 read with Section 149 I.P.C. and sentenced each of them to undergo one year's R.I. and life imprisonment for the respective offences. The sentences were directed to run concurrently. The prosecution case is as follows.

The deceased Halke was said to be a goonda addicted to liquor and used to beat villagers in the state of intoxication. Appellant No.1 was one such victim. On 23.12.74 the deceased together with P.W. 1 went to remove an electric motor fitted in the well of the deceased. They could not lift the motor and they wanted the help of a third person. They went to the village to call P.W. 5. P.W. 1 went away to the house of P.W. 2 while the deceased went to the house of P.W. 5. As P.W. 2 was not in the house, P.W. 1 waited therefor him. A little later P.W. 2 arrived. After 15 or 20 minutes P.Ws 1, 2 and 5 heard the noise of a chase and beating. They came out and saw the ten accused persons beating the deceased. After inflicting injuries the accused left. P.W. 1 went away from the village to a nearby village where he met one Kanhaiya and narrated the incident to him. Both of them returned to the village and finding the deceased dead they went back to the other village. The engaged a tonga to go to Narsinghpur to give a report in the police station. There they met P.W. 6 the brother of the deceased. A report was presented to the police. The Police Officer, P.W. 14 registered the crime, went to the scene of occurrence, held inquest and sent the dead body for post-mortem. P.W. 6 gave the report to the police. The Doctor, who conducted the post-mortem, found 20 injuries. He also found the fracture of the left temple bone, pressure on the brain and haemorrhage. He opined that the death was due to shock and haemorrhage as a result of those injuries.

2. The plea of the accused is one of denial. The prosecution mainly relied on the evidence of P.Ws 1, 2, 3 and 7. The learned Sessions Judge firstly held that they are all interested witnesses and they are related to each other and secondly pointed out some discrepancies in their evidence.

3. It is in evidence that these witnesses are not of same caste as of the deceased and nor in any way related to him. They are, however, related to the servant engaged by the deceased. On that ground alone they cannot be called interested witnesses. A witness is normally considered to be an independent witness unless he springs from the sources which are likely to be tainted such as enmity or relationship and which make him inclined to implicate the accused falsely. Nothing has been shown as to why these three eye-witnesses should be inimical towards the accused. Then coming to the discrepancies we find that they are not at all material. The learned Sessions Judge has tried to compare the depositions with the earlier statements recorded by the police and whatever the nature of the variation he termed it as a discrepancy. The High Court has rightly pointed out that discrepancies pointed out are frivolous.

4. The High Court, however, was prepared to accept the evidence of the eye-witnesses only in respect of the appellants. It is mentioned that except Total, A-8 the names of the rest of the persons were mentioned even at the earliest stage. This was a supporting factor which according to the learned Judge lent assurance so far those four accused were concerned. Coming to Total, A-8 it is pointed out that the evidence of the witnesses was that he gave a lathi blow and on that ground he is also convicted alongwith other four accused. The High Court gave the benefit of doubt to the rest of the accused.

5. In the F.I.R. only four names are mentioned i.e. accused Nos. 1, 2, 3 and 10 and there is a general allegation that others also participated. The fact that these four names were mentioned in the earliest stage in the F.I.R. weighed very much with the High Court. The other accused were acquitted taking this factor into consideration. In our view the same principle applies to the case of Total, A-8. In a case of this nature where the allegation is omnibus, one of the tests to the applied is whether the names are mentioned in the F.I.R. No doubt, that by itself is not conclusive. The same, however, lends assurance regarding their participation. In this view of the matter we give the benefit of doubt to Total, A-8. We are of the view that the remaining four appellants alongwith some others i.e. more than five persons participated in the occurrence. In the result we set aside the conviction and sentence awarded against Total, A-8. However, the convictions and sentences of other appellants are confirmed. The bail bond of Total A-8 stands cancelled. The other appellants shall surrender to serve out the sentences. Accordingly, this appeal is allowed so far as Total, A-8 is concerned and dismissed so far as other appellants are concerned.