Ugar Ahir And Ors. vs The State Of Bihar on 6 March, 1964

Equivalent citations: AIR1965SC277, AIR 1965 SUPREME COURT 277, 1964 BLJR 615, 1965 ALLCRIR 102, (1964) 1 SCWR 482, 1964 SCD 741, 1965 MADLJ(CRI) 105, 1965 1 SCJ 229, ILR 43 PAT 559

Author: K. Subba Rao

Bench: K. Subba Rao, K.C. Das Gupta, Raghubar Dayal

JUDGMENT

K. Subba Rao, J.

1. This appeal, by special leave, is directed against the judgment and order of the High Court of Judicature at Patna confirming the conviction of the appellants and the sentence passed against them by the Additional Sessions judge, Chapra, under Section 304 of the Indian Penal Code.

2. The prosecution case may be briefly stated. On April 18, 1960, at about 1 p.m. Sheonandan had gone on a bicycle to tola Korra in search of labourers. While he was returning from tola Korra by the village path leading from there to Sahbajpur and then to Nathpur, three of the accused by name Sudama, Chhathu and Nathuni, who were acquitted by the Additional Sessions Judge, came from the eastern side of a well situated to the south of the said village path and began chasing him with lathis and making noise. The rest of the accused, by name Ugar, Chandrika, Mahadeo and Chandan, who are the appellants herein, were sitting under a Bar tree to the west of the well, and they emerged with bhalas and pharsas and surrounded Sheonandan. The other accused with lathis also arrived there. Sheonandan threw away his bicycle and ran towards Habibnagar; he was being chased by the 7 accused and at the same time being assaulted by them with lathis, bhalas and pharsas. After running through several fields, Sheonandan reached the field of one Mahadeo Ahir to the north of the road. There he turned round, snatched the bhala from the hands of appellant Chandrika and gave some bhala blows to him and Ugar. Chandrika recovered his bhala and again all the appellants and the acquitted accused struck Sheonandan with the weapons they were carrying. Sheonandan fell down in the field of Mahadeo Ahir and died. P. Ws. 1, 2 and 4 saw the chase and the assaults from a distance and they asked the appellants and the acquitted accused not to assault Sheonandan; but instead of stopping the assault of Sheonandan, they assaulted the said witnesses also with lathis. On the alarm raised by these witnesses, other persons, including the wife and the brother's wife of the deceased arrived at the spot. The doctor's evidence disclosed 25 injuries on the dead body of Sheonandan, both punctured and incised. There were also injuries on the bodies of P. Ws. 1, 2 and 4. Two of the appellants, Ugar and Chandrika had also punctured wounds on their bodies. The appellants and the acquitted accused were sent up for trial to the Sessions Court for the murder of Sheonandan.

3. It will be seen from the prosecution case that the incident, from the time of the pursuit by the three acquitted accused to the time when the witnesses were assaulted, was one transaction. Though a continuous one, for convenience it may be considered under the following different parts : (1) the pursuit of the deceased, who was going on a bicycle, by the three acquitted accused; (2) the joining of the said accused by the appellants at the Bar tree; (3) the joint pursuit of the deceased by all the accused and their assaulting him all me way till he fell down in the field of Mahadeo Ahir; and (4) the intercession of witnesses, P. Ws. 1, 2 and 4, and the assault made on them by two of the appellants and the acquitted accused.

4. The learned Additional Sessions Judge, on a consideration of the entire evidence arrived at the following findings: (1) There were two factions in the village--the accused belonging to one faction and the deceased and the witnesses belonging to the other; some members of each group were wrestlers; and there was previous history of criminal proceedings between these two factions. (2) the case of the prosecution that the three accused, who were acquitted, chased the deceased with lathis was frivolous. (3) The evidence given by the prosecution witnesses that when they asked the accused not to assault the deceased the accused assaulted them with bhalas and lathis was not acceptable. (4) Neither the bicycle was found nor were there any marks of the cycle on the pathway. (5) The evidence of the witnesses that lathis were used on the deceased was not true, as there were no lathi injuries on the dead body of the deceased. And (6) the version given by the witnesses that Sheonandan snatched the bhala from one of the accused and assaulted Ugar and Chandrika was also dot true. Having disbelieved a major part of the prosecution case and the evidence, the learned Additional Sessions Judge evolved a new theory which he expressed in the following terms :

> "From the entire evidence it is clear that there was a clash between Shivnandan and Sheodutta, Jagarnath and Dharamnath on one side and the four accused Ugar, Chandrika, Mahadeo and Chandan on the other.
>
> As I have said, from the entire evidence it was clear that Sheonandan was killed as a result of assaults by the four accused but the three witnesses Sheodutt, Jagarnath and Dharmanath were not innocent persons who followed the accused to the field of Mahadeo asking them not to assault Sheonandan but they must have also been participants in the clash. Some how the clash took place but we are only left to guess as to how it started."

Having made out a new case, the learned Additional Sessions Judge acquitted three of the accused and convicted the appellants under Section 304 (Part I) of the Indian Penal Code and) sentenced them to undergo rigorous imprisonment for 7 years. On appeal, the High Court followed the same pattern in the appreciation of the evidence. It accepted the motive; it disbelieved the story of pursuit of the deceased by the three acquitted accused; it also disbelieved the evidence of the witnesses that Sheonandan had snatched the bhala from one of the accused and injured two of them with it, it also accepted the finding of the learned Additional Sessions Judge that the accused could not have inflicted injuries on the witnesses after Sheonandan had fallen down in the field of Mahadeo Ahir; it also agreed with the surmise of the Additional Sessions Judge that it was possible that the witnesses, who received the injuries, also participated in the occurrence in support of Sheonandan when he

was attacked by the appellants and others; and it also held that all the witnesses had suppressed the injuries caused to some members of the opposite party. Having agreed with the learned Additional Sessions Judge that the witnesses were active participants in the incident and having disbelieved the evidence of the witnesses on material particulars, it came to the conclusion that the prosecution had proved beyond any reasonable doubt that the appellants chased and assaulted Sheonandan with pharsas and bhalas until he died in the field of Mahadeo Ahir. On that finding it confirmed the Judgment of the trial Court.

5. Mr. Nuruddin Ahmed, learned counsel for the appellants, contended that the learned Additional Sessions Judge and the High Court, having concurrently found that the prosecution witnesses were partisans and that they had actually taken part in the incident and having disbelieved their complete version of the way in which the incident had taken place, erred in reconstructing a case for the prosecution different from that with which it had come to the court and also different from that which the prosecution witnesses deposed in the court.

6. The maxim falsus in uno, falsus in omnibus (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But. it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. That is what the courts have done in this case. In effect, the courts disbelieved practically the whole version given by the witnesses in regard to the pursuit, the assault on the deceased with lathis, the accused going on a bicycle, and the deceased wresting the bhala from one of the appellants and attacking with the same two of the appellants, the case that the accused attacked the witnesses, and the assertion of the witnesses of their being disinterested spectators. If all this was disbelieved, what else remained? To reverse that metaphor, the courts removed the grain and accepted the chaff and convicted the appellants. We, therefore, set aside the conviction of the appellants and the sentence passed on them.

7. The appeal is allowed and the appellants are directed to be set free.