

Mahesh Chandra vs State Of Uttar Pradesh on 15 September, 1978

Equivalent citations: (1979)1SCC294, 1978(10)UJ907(SC)

Author: A.D. Koshal

Bench: A.D. Koshal, Jaswant Singh, P.S. Kailasam

JUDGMENT

A.D. Koshal, J.

1. For causing the death of one Nanhu Mal, a resident of the town of Jhansi, six other residents of that place, namely, his sister's son Ramji Lal, Mahesh Chandra, Jagdish alias Panda, Phool Ghand, Lalji alias Ajai Kumar and Brij Kishore were tried by the First Additional Sessions Judge, Jhansi. In consequence, Brij Kishore accused was acquitted of the charge while Ramji Lal accused was convicted of the offences under Section 302. Section 148 and Section 323 read with Section 149 of the Indian Penal Code for which he was awarded the sentences of death, rigorous imprisonment for two years and rigorous imprisonment for 4 months respectively. The other four accused were convicted of offences under Section 302 read with Section 149, Section 323 read with Section 149 and Section 147 of the Code, the sentences awarded to them on the three counts being imprisonment for life, rigorous imprisonment for one year and rigorous imprisonment for 4 months respectively. The sentences of imprisonment in the case of each of the convicts were directed to run concurrently.

2. The five convicts challenged the judgment of the learned Additional Sessions Judge, which was dated the 2nd of November 1970, in five separate appeals instituted before the Allahabad High Court, a Division Bench of which acquitted Jagdish alias Panda and Phool Chand of the charge in its entirety. The conviction of Ramji Lal under Section 302 of the Indian Penal Code and that of his co accused Mahesh Chandra and Lalji for an offences under that section read with Section 149 of the Code was converted by the High Court to one under Section 326 read with Section 149 thereof and each one of them was sentenced to rigorous imprisonment for six years on that count, while their conviction in respect of the other offences and the sentences awarded to them in that behalf by the learned Additional Sessions Judge was maintained, with a direction that all the sentences shall run concurrently. Out of them only Mahesh Chandra has challenged the judgment of the High Court, which is dated the 5th of October 1971. in this appeal by special leave. It may also be stated here that Lalji accused is now dead.

2A. There are a few facts which are admitted on all hands and they may be briefly stated here. The place of occurrence is a one-room restaurant situated in front of the Tehsil building towards the east

of the road leading from the Elite cinema crossing to Khanderao Gate in Jhansi town. That restaurant was owned by Nanhu Mal aforesaid who was the real maternal uncle of Ramji Lal accused and the latter's brother Lakshmi Narain (C.W. 2) Prior to the occurrence Lakshmi Narain (C.W. 2) had given up his employment with his maternal uncle Nanhu Mal after serving him for a period of about 4 months and thereupon a dispute arose between the two about the arrears of salary due to Lakshmi Narain (C.W. 2) who claimed to be entitled to the full salary at the rate of Rs. 40/- per month while Nanhu Mal asserted that the dues were liable to be reduced by the cost of the meals which Lakshmi Narain (C.W. 2) had been taking at the restaurant during the course of his employment. As no settlement was reached between the two contending parties, Lakshmi Narain (C.W. 2) made a complaint dated 19.2.1969 (Ex Ka. 6) to Labour Inspector, D.N. Nigam (P.W. 3). In this dispute Ramji Lal accused was supporting his brother Lakshmi Narain (C.W. 2).

3. The prosecution case may be stated thus. On the night between 5th and 6th of April 1969, Ramji Lal and Mahesh Chandra accused gave a beating to the deceased with hockey sticks, hurled abuses at him and threatened him with death. The incident was made the subject-matter of a report (Ex. Ka. 2/2) which was lodged by Nanhu Mal at the Jhansi Kotwali police station on the same night. He was medically examined by Dr. R. Arora (PW 22) at the District Hospital Jhansi at 2.50 a.m. next morning and was found to have suffered an abraded contusion on the left side of the head, a contusion on the left side of the face and an abrasion on the back of the right elbow.

On the 6th of April 1969. at about 9.30 p.m, the restaurant was raided by 9 persons including the six accused, who were all armed, Ramji Lal with a gupti Mahesh Chandra and Lalji with iron bars, Brij Kishore with a bicycle chain and Jagdish and Phool Chand with hockey sticks. Their three companions, whose names are unknown, were armed with a lathi each. Ramji Lal, Lalji, Mahesh Chandra and Jagdish entered the room of the restaurant while their five companions blocked the entrance to it. Mahesh Chandra felled the deceased, who was inside the room, to its floor. Ramji Lal whipped out the gupti and thrust it into the chest of Nanhu Mal who was given blows with iron bars by Mahesh Chandra and Lalji. Ram Swarup (PW 4). who was employed as a servant at the restaurant and was sitting on a stone slab just outside it, rushed into the room to save his master but was struck on the head with the iron bar carried by Lalji, The assailants then made good their escape.

The occurrence was witnessed not only by Ram Swarup (PW 4) but also by six other persons, who are Nanhu Mal's wife Lajja wati (PW 1), Munna (PW 5), Ajudhi (PW 9), Tulsi Das (PW 10), Hari (PW 13) and Nanhu Mal's brother jhanda Mal (CW 1).

Nanhu Mal was carried in a tonga by Lajjawati (PW 1), Ram Swarup (PW 4) and Jhanda Mal (CW 1) to the hospital on the way to which, however, he succumbed to his injuries.

At 9 55 p.m. on the same date Ram Swarup (PW 4) was medically examined by Dr Prabhakar (PW 23) and was found to have sustained a bone-deep contused wound on the right side of the fore-head. The injury was fresh and bleeding.

Lajjawati (PW 1) went to the Nauabad police station and there lodged the first information report in relation to the murder of her husband at 10.30 p.m. on the same night. The names of Ramji Lal, Manesh Chandra and Lalji are mentioned in that report as three of the nine assailants of Nanhu Mal.

The investigation was carried out by Sub-inspector Jurbal Singh (PW 24) who secured a blood-stained stone slab (Ex. 4) forming part of the floor of the respondent room. The stains on the slab were declared as a result of Chemical analysis to be those of human blood.

The autopsy was conducted by Dr. I.S. Mathur (PW 20) on the 7th of April 1969 from 1 30 p.m. onwards. The deceased, whose age was estimated at 32 years, was found to have suffered seven injuries which consisted of an incised stab wound in the left side of the chest, an abraded contusion in the head, another contusion on the face and 4 abrasions. The incised wound had cut the left pleura and had an exit at the back. The death had resulted from this injury.

4. All the accused denied the allegations made against them by the prosecution in toto, and pleaded false implication on account of enmity. The defence evidence was calculated to show that the Investigation had not been fair.

5. The High Court noted the fact that light was available both inside and outside the restaurant room wherein the tragedy took place, and also concurred with the learned Additional Sessions Judge in finding that Ram Swarup (PW 4) was present at the spot when the restaurant was raided. It was further of the opinion, however, that the entrance to the room having been blocked by no less than five of the assailants, Ram Swarup (PW 4) could not have been allowed to go into the room and that he could not have had a full view of that happened inside it. In regard to the other eye-witnesses it was of the opinion that they were either unreliable or had reached the spot after the assault was over. It further observed:

The net result of the prosecution evidence, therefore, is that Ramji Lal, Mahesh Chandra, Lalji alias Ajai Kumar (appellants) along with several other unknown persons were the members of an unlawful assembly with the common object of causing hurt to Nanhu Mal. There is no witness on whom we may safely rely for the purpose of ascertaining as to who gave to Nanhu Mal the fatal blow with a Gupti. Hence we cannot ascribe the part of giving the Gupti blow to the deceased to any particular appellant.

It was not possible to conclude from the facts and circumstances of the case that the common object of the unlawful assembly was to cause the murder of Nanhu Mal. There could not be any strong motive for the appellants or other members of the unlawful assembly who merely belonged to their party to commit the murder of Nanhu Mal. From the facts and circumstances it appears that the common object of the unlawful assembly was to cause hurt to Nanhu Mal. As one of the members of the unlawful assembly was armed with a Gupti, it could be said that the common object was to cause grievous hurt to Nanhu Mal.

The High Court found that Ramji Lal, Mahesh Chandra and Lalji had certainly participated in the assault on Nanhu Mal and therefore convicted and sentenced them as aforesaid. On the other hand, Phool Chand and Jagdish accused were given the benefit of doubt and earned an acquittal in consequence.

6. Learned Counsel for the appellant strenuously urged that even the word of Ram Swarup (PW 4) could not be taken at its face value because that witness, when asked to pick out the appellant at a test identification parade admittedly arranged for the purpose, had failed in the attempt. When asked to pin-point the evidence on which the contention was based, learned Counsel referred to the testimony of City Magistrate R.C. Rastogi (PW 2) who had presided over the parade. We have gone through that testimony as well as the memorandum (Ex. Ka 5) which the City Magistrate prepared in connection with the parade but neither of them makes any mention of Ram Swarup (PW 4) having taken any part therein. On the other hand, this is all that the City Magistrate had to say about the parade.

Witnesses Tulsi, Munna and Ajudhia Prasad were sent in to identify Mahesh Chandra. None of them recognised him.

It is clear from this that Ram Swarup (PW 4) was never called upon to pick out the appellant at the parade, which was presumably for the reason that the two were known to each other before-hand.

Far from supporting the contention, the testimony of the City Magistrate demolishes the same.

7. As pointed out by the High Court, the name of the appellant figured in the FIR as one of Nanhu Mal's assailants who was armed with an iron bar. His participation in the assault is testified to by Ram Swarup (PW 4) whose presence at the time and the place of occurrence cannot be doubted (and has been taken for granted by both the courts below) in view of the fact that he was medically examined within half an hour of the occurrence and was found to have a bleeding injury in the fore head which had been caused by a blunt weapon and which in all probability could not have been suffered at a friendly hand. The word of Ram Swarup (PW 4) in fact appears to us to be wholly reliable and we do not find ourselves in agreement with the High Court when it says that the witness could not have been allowed to enter the room where the occurrence took place as the entrance thereto was blocked by no less than five of the raiders. The fact remains that the witness suffered a contusion in the fore head and when he says that he did so at the hands of Lalji accused when he tried to rescue his master, there is no reason why he should be disbelieved. In spite of the fact that the entrance was guarded it could not have been impossible for a daring youth to dodge the five guards and dash or sneak into the room. As it is, his word, when coupled with the circumstantial evidence about the place of occurrence and the injury which he himself received, is sufficient to sustain the conviction of the appellant and we have no hesitation in rejecting the contention that no reliance should be placed on the testimony of Ram Swarup (PW 4) also.

8. The only other challenge to the impugned judgment is that the appellant should have been convicted only of an offence under Section 323 of the Indian Penal Code inasmuch as he had not caused any grievous hurt. The challenge is wholly without substance. As found by the High Court,

the number of raiders were more than five whose common object was to cause grievous hurt to the deceased inasmuch as one of them was armed with a gupti and when such hurt was actually caused with that weapon, everyone of the raiders must be held responsible for it, in conformity with the provisions of Section 149 of the Indian Penal Code.

9. In the result, the appeal fails and is dismissed there being no reason for reducing the sentences either.