



2023 INSC 364



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1029 OF 2023

SITA RAM

...APPELLANT

versus

THE STATE OF UTTAR PRADESH

...RESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant is the original accused no.9. The appellant and the accused no.10 – Ram Bachan, were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC'). Accused nos. 1 to 8 were convicted for the offence punishable under Section 325 read with Section 149 of IPC. The appellant and the accused no.10 were sentenced to undergo life imprisonment. The accused

no.10 died during the pendency of the appeal before the High Court of Judicature at Allahabad.

2. The incident is of 17th August 1984. According to the prosecution's case, PW-1 Uday Raj Maurya, PW-2 Ram Aadhar (father of PW-1) and Karam Hussain (deceased) were sitting near the doorsteps of the house of PW-1 and PW-2. Their discussion was about irrigating the fields. According to the prosecution's case, there was previous enmity between PW-1 and PW-2 on the one hand and the accused persons on the other. There was a case filed against the family of the accused no.1 in which PW-2 was a witness. According to the prosecution's case, a decree was passed in favour of PW-1 and PW-2 and against accused no.7 Tufani. Moreover, PW-2 had filed the case against accused no.3 and accused no.4. While PW-1, PW-2 and the deceased were discussing the issue of irrigating their fields, the accused persons came there carrying bricks and bamboo sticks. The appellant was carrying a spade. At that time, accused nos.4 and 6 shouted that PW-1, PW-2 and the deceased should be killed so that the case gets finished. On hearing this, PW-1, PW-2 and the deceased ran towards the northern side of the house of PW-1. The accused persons chased and surrounded them. The appellant attacked the deceased on his head with the blunt edge of the spade.

He also attacked PW-2 by using the same weapon. After the deceased fell down, the accused continued to assault the said three persons with bamboo sticks. Karam Hussain, the deceased, succumbed to the injuries sustained due to the assault made by the appellant and the accused no.10. The prosecution examined eight witnesses, out of which, PW-1 and PW-2 were the eye-witnesses. The Sessions Court believed the testimony of PW-1 and PW-2 and convicted the accused. In the appeal before the High Court, the conviction of the appellant was confirmed. However, accused nos.1 and 2, who were the only other surviving accused, were acquitted.

SUBMISSIONS

3. The learned counsel appearing for the appellant urged that both PW-1 and PW-2 admitted in the cross-examination that they had not seen which accused assaulted the deceased. Moreover, three eyewitnesses who were present at the time of the incident were not examined. He, therefore, submitted that the conviction of the appellant cannot be sustained.

4. The learned senior counsel representing the respondent – State of Uttar Pradesh pointed out that both PW-1 and PW-2 have clearly stated that the appellant

assaulted the deceased on his head with the blunt edge of the spade. He submitted that the medical evidence supports the version of PW-1 and PW-2 as far as the assault by the appellant on the deceased is concerned. He submitted that both the Courts have believed the testimony of PW-1 and PW-2 as far as the assault on the deceased is concerned and that there was no perversity in the findings recorded by the Sessions Court and the High Court. He submitted that no interference be made with the conviction of the appellant.

OUR VIEW

5. We have perused the evidence of PW-1 and PW-2. We may note here that the High Court has disbelieved their versions to the extent to which they deposed about the injuries received by them in the incident at the hands of the accused. In fact, there is a specific finding that the version of PW-1 and PW-2 about the assault on them does not inspire confidence.

6. It is true that both PW-1 and PW-2, in their examination-in-chief, have stated that the appellant assaulted the deceased on his head with the blunt edge of the spade. In the examination-in-chief, PW-1 stated that his father PW-2 fell on the ground due to the injuries

sustained by him as a result of the assault made by bamboo sticks. Thereafter, the deceased tried to run away when he was caught by one of the accused persons and thereafter, the appellant assaulted the deceased. PW-1, in paragraph 19 of his cross-examination, stated that he and PW-2 fell down as a result of the attack by the accused persons, and therefore, he had not seen which accused assaulted them with which weapon. He admitted that he is unable to tell which accused assaulted him. In the examination-in-chief, PW-1 did not state that he also fell down after he and his father were attacked. The version of his father PW-2 is that after both of them fell down, there was an assault on the deceased.

7. Now, coming to the testimony of PW-2, in his examination-in-chief, he stated that after two accused persons shouted that PW-1, PW-2 and the deceased should be killed, he started running away. He stated that he fell down due to an assault made by the accused, and thereafter, PW-1 fell down. He stated that thereafter, the appellant assaulted the deceased. In paragraph 10 of the cross-examination of PW-2, he stated that he and his son PW-1 were beaten at the same time. However, he accepted that he had not seen who had assaulted whom. The version of PW-1 and PW-2 in the cross-examination

creates serious doubt as to whether they had seen any particular accused assaulting the deceased.

8. There is another important aspect of the matter. PW-1, in his examination-in-chief, stated that when he, PW-2 and the deceased were being assaulted, after hearing their shouts, Munif, Murtaza and Iltaf rushed there. They stopped near the house of one Funnu and shouted at the accused to leave PW-1, PW-2 and the deceased. However, the accused continued to assault them. Even PW-2 stated that the witnesses, Munif, Murtaza and Iltaf came to the spot where he was being assaulted along with other villagers. It must also be noted here that in paragraph 20 of the cross-examination, PW-1 stated that many villagers have seen the incident, including the witness Munif. PW-6 Shiv Narayan Singh, who had investigated the offence, stated in his examination-in-chief that he had recorded the statements of witnesses Munif, Iltaf and Murtaza. However, he has not stated any reason for not examining these three independent eyewitnesses. In fact, in paragraph 15 of the cross-examination of PW-2, he stated that witness Munif had come to the Court on the very day on which his evidence was recorded, but he had become hostile.

9. As observed earlier, there is serious doubt whether PW-1 and PW-2 had really seen the appellant assaulting the deceased with the blunt edge of the spade. There was a prior enmity between the two eyewitnesses and the accused. Moreover, at least three independent eyewitnesses were available whose statements under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') were admittedly recorded. One of them (Munif) admittedly attended the Court but was not examined. It is true that when there are a number of eyewitnesses, the prosecution's case cannot be disbelieved on the ground that few of the eyewitnesses were not examined, especially when the version of the eyewitnesses examined before the Court, inspires confidence. In the present case, version of PW-1 and PW-2 does not inspire confidence. That is how the failure of the prosecution to examine three independent eyewitnesses whose statements were recorded, becomes very relevant. Moreover, one of the three witnesses attended the Court but was not examined. Considering the fact that the testimony of PW-1 and PW-2 who were allegedly injured witnesses, cannot be believed, adverse inference will have to be drawn on account of the prosecution's failure to examine the three eyewitnesses.

10. Therefore, we hold that the prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt. Hence, the conviction of the appellant under the impugned judgment and orders is set aside, and the appellant is acquitted of the charges framed against him. The order dated 8th February 2021 passed by this Court records that the appellant has surrendered. We, therefore, direct that the appellant shall be forthwith set at liberty unless he is required in connection with any other case. The appeal is, accordingly, allowed.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

New Delhi;
April 12, 2023.