
(1994) 02 SC CK 0043

In the Supreme Court Of India

Case No : Criminal A. No. 208 of 1984

Shivnath Singh and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-02-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 201, 302, 323

Citation : (1994) ACR 126 : (1994) 1 Crimes 608 : (1994) 1 JT 423 : (1994) 1 SCALE 460 : (1994) 2 SCC 563 : (1994) 1 UJ 304

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. All these three appeals arise out of the same judgment of Allahabad High Court. Before the trial court 10 accused were tried for offences punishable under Sections 148, 302, 451, 323/149, 302/149 and 201/149 I.P.C. for committing the murder of one Mohan Lal with guns, axes and iron rod and for severing his head and taking it away with intention to screen themselves from legal punishment and for breaking open the house of the deceased and taking away his rifle. He trial court convicted all of them and sentenced them to undergo imprisonment for life and also various other terms of imprisonment for other offences. The convicted accused preferred Criminal Appeal Nos. 13, 14 and 15 of 1982 and the High Court dismissed all of them. Questioning the same, these three appeals are filed by the 10 convicted accused.

2. The prosecution case is as follows:

3. The appellants are all inter-related and belong to one family. There was a faction between the party of the accused and that of the deceased. On 13.9.80 at about 4 P.M. while the deceased was sitting at the door of Garikhana, all the accused came there armed with guns, axes and iron rod. Shivnath Singh, A-5 exhorted others to catch hold of the deceased and kill him. On this some of the accused caught hold Mohan Lal and Ram Nath, A-10, Jagdev Singh, A-1 and

Roop Singh, A-3 entered into the house of the deceased and took away his rifle after breaking open the door. Mata Prasad, A-9 and Rama Nath, A-10 fired gun shots on the head of the deceased. Jagdev Singh, A-1, Shahdev Singh, A-2 and Kalloo, A-4 gave axe blows and Surendra Pal Singh, A-7 beat the deceased with iron rod. Smt. Siyawati, P.W. 4, niece of the deceased and his brother's wife tried to intervene and they also received injuries. On hearing the alarm, Vishwanath Singh, P.W. 3, son of the deceased and several other persons came there and challenged the accused-appellant but they did not care. They tied the feet of Mohan Lai and dragged him upto the house of one Durga Singh. There Mata Prasad, A-9 and Ram Nath, A-10 fired gun shots on the head of the deceased and Ram Babu, A-8 and Roop Singh, A-3 severed the head of the deceased and pierced it to an iron rod and lifted it up and thereafter the accused persons carried the trunk and the severed head of the deceased upto the Khaliyan of one Jag Ram Singh. There a trunk was left and the head was taken away. P.W. 3, son of the deceased, went and lodged a report in the Police Station, Churkhi, six miles away, on the same day at about 6.45 P.M. The case was registered and the investigation was taken up. The trunk of the deceased was sent for post-mortem after inquest. On 15.9.80 the severed head of the deceased was recovered from the water in a river on pointing out by Inder Singh, A-6 and the same was also for post-mortem. The Doctor, who conducted the post-mortem, on the trunk and the head of the deceased, found pellet injuries and opined that the trunk and the head belong to the same person. Another Doctor, P.W. 6 examined Smt. Siyawati, P.W. 4 and on her, he found two contusions. After completion of the investigation, the charge-sheet was laid. The accused however denied the occurrence and further stated that the deceased had association with dacoits and that he was also quarrel some and was involved in a number of cases. They also took the defence that the head belonged to some young person and the trunk also was not of Mohan Lal and after recovery of these two parts of body belonging to the two different persons the police have foisted the case against them. The learned trial Judge relying on the evidence of the eye-witnesses P.Ws. 3 and 4 and also on the evidence of P.W. 2, medical evidence and other circumstances convicted all the 10 accused. The High Court once again considered the evidence of the material witnesses in great detail and agreed with the findings of the trial court and confirmed the convictions and sentences passed against the appellants.

4. Learned counsel appearing for the appellants submitted before us that all the material witnesses are interested witnesses and their versions on some of the aspects is artificial. The presence of P.W. 3 is doubtful inasmuch as he was not injured though he was also a co-accused in the earlier case along with the deceased and if really as stated by this witness the accused carried the head in that manner, many supporters of the deceased would not have kept quite and the medical evidence does not conclusively establish that the head recovered was that of the deceased and there are indications to show that the F.I.R. was brought into existence at a belated stage. It is also lastly submitted that the details of attack are not mentioned and there is no possibility of shifting grain

from chaff in the evidence of the eye-witnesses and on such omnibus allegations all the appellants can not be convicted. We will first briefly deal with the evidence of the eye-witnesses and then go to the other submissions.

5. P.W. 1 deposed that at the time of the incident he was present in the Baithak of Ram Adhar which is in front of the house of Durga Singh. Genda Singh and Vakil Singh were also sitting there with him and they were discussing about the agricultural matters when he heard the gun shots and cries and came out and witnessed the occurrence. He is a resident of the same Village and his name is mentioned in the F.I.R. He stated that the accused persons were dragging Mohan Lai at a distance of 4 or 5 cubits from Garikhana of Mohan Lai. He fully supported the prosecution version as to what happened thereafter and he named all the accused persons. He also witnessed when the accused cut the head of Mohan Lai and carried it and he and other witnesses followed them and that the accused left the trunk at the Khaliha of Jagram Singh and went towards south a Song with severed head of Mohan Lai. P.W. 2 is the son of complainant and grand son of the deceased. He is a boy aged 12 years and he was a student of 8th class. Since it was Saturday he left the school early at about 3.45 P.M. He was inside his house along with his mother and sister and the door of the house was open. Ram Nath, A-10, Roop Singh, A-3 and Jagdev Singh, A-1 armed with gun and axes entered the house and broke open the door of the Kotha and took away the rifle. He has also given the other details of the occurrence. He further stated that Smt. Siva Wati, P.W. 4 tried to save Mohan Lai and she also suffered injuries when she was pushed by the accused. He gave the other details "of the occurrence and how the accused dragged away the trunk and carried away the head of the deceased. P.W. 3 is the complainant. He supported the prosecution case from beginning to the end and gave report to the police at the earliest. P.W. 4 is the daughter of the brother of the deceased. She also witnessed the occurrence. She also received injuries and her presence at the scene of occurrence can not be doubted. She also has given the whole account of the occurrence including the accused carrying away the head and the trunk of the deceased after the head was severed. P.W. 5 is the grand-son of the brother of the deceased. He is in employment in Municipal Board at Kalpi and he was on leave during this relevant period. When the occurrence took place, he was in the fields. He deposed that when he came to know about the murder, he came to the Village immediately and he wrote the complaint to the dictation of P.W. 3. All these witnesses are cross-examined at length most of which is on the aspect of interestedness. Learned counsel for the appellant attacked the evidence of these witnesses on the ground that they were all interested and if they had been present at the scene of occurrence they would have also been killed. We do not agree. The details of the occurrence would show that Mohan Lai was the only target and he has been brutally killed. At any rate P.W. 4, a lady, also received injuries and her evidence is not at all shaken in any manner. It is contended that the injuries on her person are concocted and a false medical report has been obtained. There is no ground whatsoever to draw such an inference and the

suggestion has no basis. The evidence of the interested witnesses can not be discarded on the ground that they are close relations of the deceased and what is necessary in such cases is that a closure scrutiny has to be done. Both the courts have carefully examined the evidence of these witnesses and have given good reasons to accept the same. To satisfy ourselves we have also perused their depositions and we see no grounds to come to a different conclusion.

6. Learned counsel also pointed out some discrepancies which after careful examination, in our view, are not at all material. All the witnesses belong to the same Village and they live in vicinity. If they have not given a correct estimate of time that would be attributable only to their lack of sense of time. In any event the whole criticism is as to the time which they would have taken to reach the place of occurrence. Having regard to the location of their houses it is only a matter of few minutes to reach the place of occurrence and from that alone it can not be said that they must have come after the occurrence. Some of the witnesses who rushed from their houses have also deposed that they heard the cries and in normal course of events they must have rushed immediately.

7. Regarding the time and place of occurrence there can not be any doubt. Even in the earliest report, the place as well as the time are mentioned. The evidence of the Doctor, who conducted the post-mortem, also shows that the occurrence must have taken place round about that time. It must be noted that in this case the occurrence took place at about 4 P.M. The report was lodged at 6.45 P.M. The inquest was held on that every night and the post-mortem was conducted at about 9 O'clock next morning. Therefore we do not find any basis to doubt the time of occurrence.

8. Learned counsel also argued that the blood stains must have been found at the place where the deceased was beaten and also at the place where the head was cut and the investigating officer did not collect the blood-stained earth. Therefore the place of occurrence is doubtful. This aspect has been examined by both the courts below and it has been noticed that presence of blood stains were noted in the site plan and if the investigating officer did not collect the blood stains at all the places, that by itself is not an infirmity. Learned counsel vehemently argued that there is a grave doubt whether the recovered head was that of Mohan Lai. In this context reliance is placed on the evidence of P.W. 6., the Doctor, who stated that the trunk of which he conducted the post-mortem was stout built and that the head was that of a young man. According to the learned Counsel the deceased was is not a young man and therefore the prosecution has not proved that it was the head of Mohan Lal. In our view this is not at all an infirmity. Even assuming that the prosecution has not conclusively proved that the head which was recovered was that of Mohan Lal, witness after witness has clearly deposed that Mohan Lal was killed and his head was severed and there can not be any doubt that Mohan Lal was beheaded in the manner stated by these witnesses. As a matter of fact it is also mentioned in the F.I.R. that the head was cut off. An argument was advanced regarding the identification

of the body on the ground that P.W. 5, the grand-son of the brother of the deceased filed an affidavit that he did not identify the body. We can not give any weight to this affidavit even if it had been filed in that manner. P.W. 5 deposed that he came from the fields after hearing about the occurrence and to the dictation of P.W. 3 he wrote the complaint. He was also a witness to some of the recoveries including the head. This witness was cross-examined at length on several days regarding the recoveries particularly that of the head. We do not find any serious infirmity in his evidence. We have to point out that all the submissions of the learned Counsel involve only appreciation of evidence and both the courts below have considered the evidence of the material witnesses in great detail and as already mentioned we have also examined the same and we are satisfied with their evidence. Learned counsel, however, lastly submitted that it is not possible to separate grain from the chaff in such cases and some of the accused are not attributed any specific overt acts and that the appellants can not be convicted on such omnibus allegations. The way the crime has been perpetrated would manifest the object of the unlawful assembly and every member of such unlawful assembly would be squarely liable.

9. We see no merits in these appeals and the same are accordingly dismissed.