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(1999) 11 SC CK 0092

In the Supreme Court Of India

Case No : Criminal Appeals Nos. 622-23 Of 1990

State of U.P. APPELLANT

Vs

Prem Singh RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Citation : (2000) 10 SCC 141

Hon'ble Judges : M. B. Shah, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The State of Uttar Pradesh is in appeal against the order of acquittal recorded by the Allahabad High Court in respect of accused Prem Singh and Basantha. Three persons stood charged for having caused the murder of the wife and 3 children of PW 1 on 9-1-1985 at 5.00 p.m. inside the house of PW 1. Out of those 3 accused persons, the learned Sessions Judge did not find any evidence against accused Suraj and accordingly acquitted him. He, however, convicted Prem Singh of the charge under Section 302 and taking into fact the brutality of the offence, sentenced him to death. Accused Basantha was convicted under Sections 302/34 and was sentenced to imprisonment for life. On an appeal being carried by Prem Singh and Basantha, the High Court on reappreciation of the evidence of the 3 eyewitnesses PWs 1, 2 and 3 came to hold that their testimony cannot be held to be reliable and, therefore, acquitted the two accused persons. While the State''s appeal was pending in this Court, accused Basantha died and therefore only the case of Prem Singh remains. The prosecution case in bringing home the charge against Prem Singh depends upon the ocular testimony of PWs 1, 2 and 3. PW 1 is the father who used to serve at Delhi and used to commute from Ghaziabad daily. PW 2 is the daughter who was studying in school and on the date of occurrence was taken by her father while returning from Delhi on the way back home. PW 3 is a nearby tea-shop owner who on hearing the noise from the house in question, rushed to the house and saw the accused persons coming

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out of the house with bloodstained weapon in their hands. The High Court in the impugned judgment has indicated that since PW 1 has not indicated any special reason for going early on the date of occurrence, his presence at the scene of occurrence should not be believed. The High Court also further came to hold that it is not possible to accept the prosecution case that the occurrence had taken place at 5.00 p.m., which in our opinion cannot but be a conjecture on the part of the High Court. The Court has also recorded a finding that the accused persons would not have selected a time anticipating that the witness, namely, PW 1 would come back to the house and this fact improbabilises the prosecution case. According to the learned Judges of the High Court the position of the dead bodies in the room creates much doubt in the truthfulness of the statements of the eyewitnesses. The Court has also further indicated that it is not known why the accused would, at all, cover the dead bodies with a quilt and the fact that the dead bodies were found to be covered creates a doubt about the prosecution case. Last but not the least the Court has commented on the fact as to how the door of the house was open so as to enable the witnesses to come and see while such ghastly murder was taking place. On a bare scrutiny of the impugned judgment of the High Court, it would appear that the High Court while sitting in appeal has not appreciated the evidence on record but on the other hand has entered into surmises and conjectures and, thereby, disbelieved the prosecution case. In view of the reasoning given by the High Court in discarding the oral testimony of the aforesaid 3 eyewitnesses, we have ourselves gone through the evidence of the aforesaid witnesses and we do not find anything elicited in their cross- examination to impeach their testimony in any manner. On the other hand, the witnesses have truthfully narrated as to what they saw at the time of occurrence. As it appears the occurrence took place at 5.00 p.m. and FIR was lodged as early as 7.40 p.m., shortly 2 hours and 40 minutes after the occurrence. It gives a clear picture of the entire episode. PW 2 though a child has been able to fully narrate the incident and has stood the cross- examination fully. The evidence of PWs 1 and 2 clearly establishes the charge of murder against accused Prem Singh and in our opinion the reasons advanced by the High Court in disbelieving the eyewitnesses and in acquitting the accused persons cannot be held to be reasons in accordance with law. We, therefore, set aside the impugned order of acquittal of accused Prem Singh and convict him of the charge under Section 302. So far as the sentence is concerned, after a lapse of so many years we do not think it appropriate that he deserves any capital punishment. He is therefore sentenced to imprisonment for life. These appeals are accordingly allowed.

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