(1952) 01 AHC CK 0011

Allahabad High Court

Case No: Criminal Appeal No''s. 48 of 1950 and 639 of 1949

State		APPELLANT
	Vs	
Rambali and Others		RESPONDENT

Date of Decision: Jan. 30, 1952

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 154
- Evidence Act, 1872 - Section 1, 134, 164, 24

Citation: AIR 1953 All 163 : (1952) 22 AWR 180

Hon'ble Judges: Raghubar Dayal, J; Agarwala, J

Bench: Division Bench

Advocate: B.D. Gupta, B.S. Darbari and C.S. Saran, for the Appellant; J.R. Bhatt, Asst. Govt. Advocate and Chaturbhuj Sahai, for the Respondent

Final Decision: Dismissed

Judgement

Agarwala, J.
These are two connected appeals arising out of the same case.

2. Seventeen persons, were prosecuted for committing a riot and for committing murder of one Babua Shambhu Prasad Singh, zamindar of village Rajhai, in the district of Gorakhpur. Of these only six, namely, Prag Chauthi, Girgit, Adhare Singh, Mangru and Budhram, were convicted by the learned Sessions Judge under Sections 143 and 302/140, I.P.C. and sentenced to two years'' R.I. under the former section and to transportation for life under the latter sections. The rest were acquitted. Those who were convicted have appealed to this Court and their appeal is No. 639 of 1949. Out of the eleven acquitted persons, the Government has appealed against the acquittal of three persons only, namely, Rambali, Jogi and Pirthi, and its appeal is No. 48 of 1950.

3. The incident took place at about noon on 3rd October 1948. The prosecution evidence does not clearly disclose what the origin of the incident was. On the date in

question one Gobri Choukidar is stated to have phoned to the Police Station Kotwali, Gorakhpur, at about 1 p.m. and is alleged to have made the following report:

"There is a field of Chauthi Pasi in which kodoarhar crop is sown. A case in respect of this field is going on between Babua Shambhu Prasad and Chauthi Pasi, resident of Rajhai. Chauthi Pasi along with 16-20 persons was getting the crop of this field reaped since 9 a.m. Bubua Shambhu Prasad on hearing about the reaping of the crop went to the field taking 12-14 Ahirs, whom he had called from outside, armed with lathis and prevented the work going on in the field. Ghauthi raised an alarm. Ram Bali, Parag Lonia, Girgit Lonia, Adhar Singh, Mahadeo Pasi, Algu Lonia, Prasad Lonia. Ram Deo Lonia, Panchoo Kewat and Deoki Pasi of Rajhai and other male members of the families of these persons, armed with lathis and spears and shouting "mar, mar" came up there. The Ahirs on seeing lathis and spears ran away. Then all those persons began to beat Shambhu Babua. I was at my house. On hearing the alarm I ran up. The place from where the fight was visible I ran up shouting that they should not beat him. Thereupon they stopped beating him and ran away. Kodai Singh, Bepat Lohar, Sita Ram Gosami, Sita Ram Koeri, Surat Koeri and several other male and female of the village reached there while the marpit was going on and witnessed everything. Babua Shambhu Prasad had become unconscious by the time I reached there. He was breathing faintly. I have come running here to send a message by phone. He has received lathi and spear injuries all over his body. He is bleeding profusely. He may be dead or alive. The marpit has taken place at noon."

4. Gobri, the alleged maker of the report, died a few days after making the report and could not be produced in Court. As the report is not signed by Gobri, there was no evidence that Gobri indeed had made this report. The fact that a report was made is relevant, but it cannot be said with confidence that it was Gobri Choukidar who made the report or that the contents of the report were correct,

5. On receipt of this information on phone the circle Inspector proceeded to the spot at once. He remained there for about three hours but made no enquiry, or, at any rate, any official enquiry. The Sub-Inspector who investigated the case found that there were blood marks in the field of one Badri. This field was at a distance of three furlongs from the field of Chauthi in respect of the crop of which it was alleged in the aforesaid report that there was a dispute between Chauthi and the deceased Babua Shambhu Prasad Singh.

6. The post mortem examination of the deceased showed that he had received no less than 16 injuries on the top of the head and about 23 other injuries on various other parts of the body. These injuries consisted of contusions, incised and punctured wounds and abrasions. The skull was fractured. In the opinion of the doctor, the cause of death was shock haemorrhage, multiple fracture of the skull and injury to the brain caused by blunt and sharp pointed weapons.

7. One of the accused, namely, Chauthi made a statement which was recorded as a confession though it was not one. In this statement he stated that on the day of occurrence he was getting his field reaped by 16 or 17 labourers, that in the meantime Babua Shambhu Prasad Singh came up at about 10-11 a.m. with 25-30 persons armed with lathis and began to get him (Chauthi) beaten that upon this his (Chauthi''s) labourers raised an alarm, that thereupon Babua Shambhu Prasad Singh ran away towards the jungle in the south and that he was chased by his (Chauthi''s) labourers. Chauthi stated that he did not know what happened afterwards. It is obvious that this statement was wrongly recorded as a confession because Chauthi does not implicate himself at all.

8. The police examined witnesses and put forward a case which was different from the one which was reported to it on the phone. In the new case which was set up it was alleged that there was enmity between one Jwala Prasad Singh, a newly settled cultivator of Rajhai and Babua Shambhu Prasad Singh deceased and the accused in the case were also in revolt against Babua Shambhu Prasad Singh. A few days before the murder, Jwala Prasad Singh convoked an assembly of the tenants who were hostile to Babua Shambhu Prasad Singh, at his house at night. The assembly decided to kill Babua Shambhu Prasad Singh. On the day of occurrence, Babua Shambhu Prasad Singh was returning from Gorakhpur to his Chhaoni. When he reached Badri''s field, Mangru and Budhram, who were armed with spears, came up from behind and assaulted him with spears, and Chauthi and Adhare, who were also armed with spears, followed up their colleagues. Thereafter there was an onslaught by all the other accused who were armed with lathis, and the whole lot showered on him blows with their weapons. The village people rushed towards the scene of occurrence and the assailants, who had meanwhile finished their job, ran away into the neighbouring jungle. As a result of the injuries Babua Shambhu Prasad Singh expired on the spot.

9. In support of what had happened at Jwala Prasad Singh''s house, the prosecution produced three witnesses, namely, Bachu Khatik, P.W. 10, Lagan, P.W. 11, and Chatru, P.W. 12. The statements of these witnesses was disbelieved by the learned Sessions Judge and, in our opinion, rightly. There was no evidence in support of the motive assigned for the marpit in the telephonic report. Thus mystery shrouds the initial motive for the incident.

10. In support of the prosecution case that Babua Shambhu Prasad Singh was in fact beaten by the appellants and others, the prosecution was able to produce ten eye-witnesses. These were, P.W. 1, Kodai, P.W. 2, Bipat, P.W. 3 Sitaram Goshain, P.W. 4, Jaddu, P.W. 5, Rambali Koeri, P.W. 6, Shiam Lal, P.W. 7, Sita Ram Koeri, P.W. 8, Bechu Koeri, P.W. 9, Badri, and P.W. 13, Surat Koeri. Of these ten witnesses, the learned Sessions Judge discarded the testimony of the six and relying upon the statements of P.W 4, Jaddu, P.W. 5, Rambali Koeri, P.W. 6, Shiam Lal, and P.W. 7, Sita Ram Koeri, he convicted the appellants as stated already.

12. The non-proof of the origin of the fight is not very material if the actual beating by the appellants of the deceased were believed. The question, therefore, is whether these four witnesses on whom the learned Sessions Judge placed reliance are worthy of belief. The learned advocate for the appellants has strenuously urged that they are not. Of these four witnesses, the names of three were not mentioned in the so-called first information report alleged to have been made by Gobri choukidar. We do not think that this fact should discredit their testimony. In the first place, the report, as we have said, was not proved by Gobri, he being dead and the contents of the report cannot be taken either against the accused or against the prosecution. In the second place, it was stated by Gobri that in addition to the persons named in the report there were other persons also who witnessed the occurrence.

13. As against Jaddu and Shiam Lal, it has been alleged that they are not independent witnesses because they are tenants either of the deceased or his relations Babua Debi Prasad or Babua Jhagru Singh. This again is a fact which, in our opinion, cannot entirely destroy the value of their testimony having regard to the fact that they had their fields in the village from where they could possibly have reached the place of occurrence and seen the marpit. When a dispute is between the zamindar of the village and the tenants, it is inevitable that witnesses would come either from one group or the other. Their testimony cannot be discarded solely on the ground of their being the zamindar''s tenants.

14. As against Sita Ram Koeri, it was alleged that his field was about three furlongs away from the place of occurrence and his statement that he heard the noise from the field where he was working could not be believed because he was so far away. But the witness stated that the place of incident was visible from the place where he was working and that he immediately rushed to the spot and saw the appellants from a distance of about one or one and a half bighas that is about 60 or 70 yards. This statement does not appear to be improbable.

15. There is, therefore, no overwhelming reason to discard the statements of these witnesses and yet it must be conceded that, although their testimony cannot be discarded outright, the statements of two of these witnesses, namely, Jaddu and Shiam Lal, who are admittedly tenants either of the deceased or of the relations of the deceased, must be looked upon with a certain amount of caution and implicit reliance cannot be placed upon them.

16. There is no defect so far as the statements of Ram Bali and Sita Ram Koeri are concerned. Apparently they are independent witnesses. Ram Bali and Sita Ram Koeri swear that they saw the six appellants, Adhare Singh, Mangru, Budhram, Chauthi, Girgit and Prag amongst the assailants. Ram Bali does not mention the name of Jogi against whom there is a Government appeal and Sita Ram Koeri does not mention the names of Rambali and Pirthi, two of the other respondents in the Government appeal. It seems to us, therefore, that the case against the six appellants in Appeal No. 639 of 1949 was amply established, but as against the three respondents in the

Government appeal it was not satisfactorily established.

17. The learned Sessions Judge acquitted the three respondents in the Government appeal on the ground that they were named only by two reliable witnesses. The learned Sessions Judge, it seems, applied the formula that those of the accused who were named by three or more witnesses could alone be convicted. In our opinion, the formula adopted by the learned Sessions Judge cannot be said to be based upon any sound principle. In law there is no bar for the. Court from convicting a person upon the testimony of a single witness. The Court may convict a person if it implicitly believes a solitary witness. It is not the quantity of evidence but the quality that weighs with the Court. Ordinarily the courts have often held that the statement of one witness is not enough for the conviction of a person. No hard and fast rule can be laid down as to how many witnesses would be sufficient for the purpose. In some cases, not less than three witnesses have been held to be sufficient. In others, statements of only two witnesses have been considered to be enough.

18. In our opinion, in a case like the present the testimony of two reliable witnesses would be quite enough for the conviction of a person. In the present case, having regard to the fact that two of the witnesses, Jaddu and Shiam Lal, are tenants of the deceased and only one of the other two witnesses mentioned the names of the respondents in the Government appeal, we think that the learned Sessions was right in acquitting them.

19. We, therefore, dismiss both the appeals.

20. If Rambali, Jogi and Pirthi are in custody, they will be released forthwith unless required in connection with some other case.