

Cr1.A.No. 97 OF 2001
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ITEM NO.106 COURT NO.07 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.97 OF 2001@@
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NANDA & ANR. ... APPELLANT(S)

VERSUS

STATE OF RAJASTHAN ... RESPONDENT(S)

(With appln.(s) for exemption from filing O.T. and with Office Report)

Date: 06/08/2002. This/These matter(s) were called on for hearing today.@@
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CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s) Mr. Anis Ahmed Khan, Adv.
Mr Gulab Chandra, Adv.

For Respondent (s) Mr. Alok Bhachawat, Adv.
Mr. Ranji Thomas, Adv.
Ms. Bharati Upadhyay, Adv.
Mr. Javed M. Rao, Adv.

UPON hearing counsel the Court made the following
O R D E R

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Heard learned counsel for the parties for about one hour.

The appeal is allowed in terms of the signed order. The order of the High Court stands set aside and quashed. The accused - appellants be released forthwith, if not wanted in any other case.

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(K.K. Chawla) (Shelly Sengupta)@@
AA
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.97 OF 2001@@
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NANDA & ANR.

APPELLANTS

VERSUS

STATE OF RAJASTHAN

RESPONDENT

O R D E R@@
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The case relates to an occurrence which took place on 16th February, 1993 at about 8.00 or 8.30 A.M. in Village Jiyapur. There were in fact 15 accused persons and the Additional Sessions Judge, Gangapur City, convicted four accused persons, namely, Nanda, Kedar, Kalyan and Meethiya under Sections 148 and 302 of the Indian Penal Code and sentenced each of them to undergo one year rigorous imprisonment with fine on the first count and for the second count they were sentenced for life imprisonment together with fine. Rest of the accused were acquitted by the Additional Sessions Judge.

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It is against the decision of the Additional Sessions Judge that the matter came up before the High Court and the High Court allowed the appeal of Kalyan and Meethiya by setting aside their conviction under Sections 302 and 148 of the Indian Penal Code and acquitted them from all charges and partly allowed the appeal of the appellants herein to the extent of their conviction under Section 148 IPC and their conviction under Section 302 IPC has been altered to under Section 302/34 of the Indian Penal Code and awarded them sentence of imprisonment for life.

The two convicted accused persons, namely, Nanda and Kedar who in turn moved this Court under Article 136 of the Constitution and by reason of subsequent grant of leave the case comes up for hearing before this Bench.

The High Court in its order has categorically recorded that the prosecution has

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produced two sets of witnesses. One set consists of PW.1 to PW.4 and the other set consists of PW.5 and PW.6. The High Court having scrutinized the first set of witnesses came to the conclusion that no reliance can be placed on the evidence tendered in Court since the evidence does not inspire any confidence. In support of its conclusion, the High Court cited four specific reasons: (1) same community and residents of the same Village to which the deceased belonged; (2) witnesses claim to have seen the occurrence of giving merciless beating to Faiyaz, yet they did not care to inform even the family members or anyone else that the assailants were the accused persons or they were eye witnesses to the incident; (3) had the four witnesses gone along with the deceased to Jiyapur for getting the matter sorted out as regards the land dispute their conduct would have been otherwise different; and (4) it is indeed unnatural a conduct which clearly shows that they had not seen the occurrence and cannot but be termed to be made up witnesses.

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The learned advocate appearing for the State - respondent rather strongly emphasized that the conclusion as regards the non-reliability of the evidence cannot withstand the test of reasonableness and as a matter of fact the High Court was in grave error in not accepting the evidence tendered by PW.1 to PW.4. No amount of credence has been given to the evidence of the eye witnesses by the High Court which resulted in the acquittal of two accused persons and the same cannot be justified in the contextual facts.

The learned advocate further drew our attention to the evidence tendered in the matter by the four eye witnesses. Unfortunately, we are, however, not in a position to lend our concurrence to the submission of the learned advocate for the State. In our view, on a perusal thereof it appears that the High Court was otherwise justified in not relying upon the evidence of PW.1 to PW.4 since their evidence cannot be said to be otherwise trustworthy even.

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Significantly, however, the High Court relies upon the evidence of PW.5 and PW.6 in order to retain the verdict of guilt as regards the appellants herein, viz., Kedar and Nanda.

Both these witnesses, however, have been declared hostile and though it does not mean that the evidence of the hostile witnesses cannot be relied upon or be looked into but the evidence tendered by the hostile witnesses shall have to be considered with circumspection and subject to strict scrutiny by the Court. It is on this backdrop we have to analyse the evidence. The High Court apparently did not have the same view of the matter and relied solely thereon in order

to retain the verdict of guilt and the punishment of life imprisonment under Section 302/34 IPC.

The examination in chief of PW.5 prior to his being declared hostile reads as follow:-

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"I did not know Faiyaz Pahalwan from before. I saw him on the day when incident took place. Faiyaz is died now. I was

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inside my house. It was 9 o'clock morning. Faiyaz was coming running. He entered in the door of my house and Nanda and Kedar were behind him. Nanda was armed with Gandasi and Kedar was with Dhariya. They were coming and beating Faiyaz. The doors of my Patod were open in which Faiyaz suddenly entered and bolted it from the inside. Nanda bolted from outside. I was sick. Three persons more had come who were Jaggu, Sita and Ghisiya amongst them. Due to commotion and uproar, I could not see what they were bearing in their hands and what were the weapons. All the five accused warned me to run away from there otherwise to beat me. Due to this fear I was trembling and so I escaped from there. I went away from the house. I would have gone yet some paces from my house, they brought Faiyaz dragging out of the Patod. When I saw, at that moment Kedar was dragging him. Seeing the bleeding, I felt shivering sensation and with closed eyes I went away and came back at home after sun set. I did not see that Patod in the evening wherein Faiyaz had entered. I gave the names of those five persons who were present and none the else."

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Thereafter, PW.5 was declared hostile and the learned advocate for the State did cross-examine PW.5.

PW.6 also did not come out with a definite piece of evidence as regards the involvement of the accused persons.

The examination in chief of PW.6 reads as below:-

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"Last year, in same season, at 9.00 a.m. when the event of fighting happened with Faiyaz, I was busy in cooking work in the house. One my son was taking food who was very small and nobody else was there.

Faiyaz came running in my BAKHAR (house). Other than Faiyaz, Kedar and Nanda also came behind. They were having something in their hands but I do not remember what were the things actually. The house in which Faiyaz came was the 'PATOR'. After coming in the house he latched the door from inside whereas, Nanda latched it from outside. Behind them, some work who were Sita Ram, Jaggu, Ghisiya and then Kalyan also came. I saw the wooden pieces in their hands. I prayed them with folded hands to take him out then they warned me to walk away otherwise to kill me and on this, I came out with the child. What happened subsequently to Faiyaz I do not know. I had come back in the evening. There was water fallen in the PATOR in which Faiyaz had entered. Other than that I saw nothing. The persons whom I have named today they are present in the Court."

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It is at this juncture PW.6 was declared hostile and the learned Government advocate started his cross-examination thereon. On scrutiny of evidence tendered by PW.5 and PW.6 we are not in a position to come to a conclusion that the same points to the guilt of the accused persons, neither, brings home the charge under Section 302 of the Indian Penal Code as regards the accused persons. The evidence of PW.5 and PW.6 not only creates a doubt but a definite suspicion about its

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credibility as also its acceptability and on the wake of the aforesaid, the benefit ought to go to the accused appellants. The High Court, if we may say so has read into the evidence something which is not available therein. Significantly, the High Court though noticed that the FIR was not forwarded to the Ilaqa Magistrate but the consequential effect thereof was not considered; though, however, the possibility of implicating innocent persons in the case, was not ruled out. The conviction and sentence as has been passed do not go well with the observations of the High Court as above. We do feel it expedient to record that the High Court has fallen into a manifest error warranting an order of acquittal so far as the accused appellants are concerned.

The appeal thus stands allowed. The order of the High Court stands set aside and quashed. The accused - appellants be released forthwith, if not wanted in any other case.

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.....J.
(U.C. Banerjee)

.....J.
(B.N. Agrawal)

New Delhi,
August 06, 2002.