

## **PRIVY COUNCIL**

Brij Bhushan Singh

Vs.

Emperor

P.C.A.No.32 of 1945

(Lord Thankerton, Lord Goddard and Sir John Beaumont. JJ.)

17.10.1945

### **JUDGMENT**

#### **SIR JOHN BEAUMONT J.**

1. This is an appeal by special leave against a judgment and order of the Chief Court of Oudh at Lucknow dated 5th May 1944, varying as to sentence only an order of the Sessions Judge at Lucknow dated 10th January 1944, by which the appellant was found guilty of the offence of culpable homicide not amounting to murder of one Bilasia, his wife's bandi maidservant, under para. 2 of Section 304 Penal Code, and was sentenced to six years' rigorous imprisonment, a sentence which, by the said variation was reduced to a period of about four months which the appellant had already served. At the conclusion of the arguments, their Lordships announced that they would humbly advise His Majesty that the appeal should be allowed and that they would give their reasons later. This they now proceed to do. The original charge against the appellant was under Section 302 of the said Code for the murder of Bilasia, but he was committed for trial on the charge of culpable homicide not amounting to murder under section 304. In the Court of Sessions, however, the charge was altered to one of, murder under section 302, and, although the eventual conviction was under Section 304, it was on the charge of murder that the appellant was tried by the Sessions Judge sitting with five assessors.

2. At the same time, and in relation to the same alleged offence, the appellant separately, and four other persons, who were accused 2 to 5, jointly, were charged with the offence of causing evidence of the commission of the said offence of murder to disappear, to wit, with the destruction or disposal of the body of Bilasia, knowing or having reason to believe that the offence had been committed, and with the intention

of screening the offender from legal punishment, an offence punishable under Section 201 of the said Code. No objection seems to have been taken to the trial of accused 2 to 5 jointly with the appellant, although it was not suggested that they had taken any part in, or had any knowledge of, the alleged murder by the appellant. However, as these accused were acquitted, this point need not be discussed. Under the provisions of the Criminal Procedure Code and certain regulations of the Local Government, a charge under section 302, Penal Code, is triable by a Judge with assessors, and a charge under Section 201 is triable by a Judge with a jury. At the said trial the same five gentlemen acted as assessors on the main charge and as jurors on the minor charge.

3. The prosecution case was that on 26th May 1943, in the appellant's house at Lucknow, Bilasia had been found in compromising circumstances with the appellant's bearer, one Samuel, and that on this fact being reported to the appellant on his return from his office at about 7.30 P. M. he gave Bilasia a beating. The prosecution suggested that it was a very severe beating and that it reduced the girl to the point of death. At about 8-80 P. M. the appellant went out to dinner with a friend, and returned at about midnight, and the prosecution alleged that by that time Bilasia had died. Thereupon, that is shortly after midnight, the appellant, with his wife and his chauffeur Mahabir, drove in the appellant's car some 60 miles to the house at Ramgarh Gularia of Bhanwar Singh, whose wife, a sister of the appellant's wife, had a bandi maidservant named Basanti who was a cousin of Bilasia. The prosecution alleged that the dead body of Bilasia was in the boot of the car, and that the object of the journey was to dispose of such body. The prosecution alleged that a mile or two before reaching Ramgarh Gularia the appellant's car had a puncture, and that certain villagers who were passing in a bullock cart took the appellant's party up to the house of Bhanwar Singh; that when the party reached the house, Bhanwar Singh, who was accused 2, sent his servant, who was accused 3, and two Pasis who were accused 4 and 5 with Mahabir to the appellant's car; that they removed the body of Bilasia from the car and concealed it and subsequently dismembered it and scattered the bones in the jungle, and later pointed out such bones to the police.

4. The appellant admitted that he gave Bilasia a beating on the evening of 26th May but alleged that it was a light beating, mainly on the hands and arms, though he gave her one blow on the back as she was running away. He said that he was very angry about Bilasia's conduct since she had been guilty of similar conduct on previous occasions, and that he insisted that his wife should get rid of her at once. He alleged

that on his return from his dinner party at about midnight he was very much annoyed to find that Bilasia was still in the house; he refused to have her any longer under his roof and insisted that he and his wife and chauffeur should take her at once to the house of Bhanwar Singh, where she could be handed over to the care of Basanti. On this part of the case, the real point at issue between the prosecution and the defense is whether it was Bilasia herself who, or Bilasia's dead body which was taken in the car from Lucknow. The appellant admitted the puncture a mile or two short of Bhanwar Singh's house and said that he and his wife and Bilasia walked the rest of the way to the house, leaving the chauffeur to repair the puncture; that his wife and Bilasia remained at Bhanwar Singh's house, but the appellant himself returned to Lucknow in his car as soon as the puncture was mended. It is common ground that when the police visited the house of Bhanwar Singh on 28th May, Bilasia had disappeared and has not been heard of since. The appellant's story is that she had gone out to the jungle to answer a call of nature and had not returned. At the trial the jury returned a verdict of 'not guilty' in respect of all the accused upon the charge under section 201, and as assessors they expressed the view that no offence was proved against the appellant under Section 302 or section 304. The Sessions Judge did not agree with the verdict of the jury and made a reference to the Chief Court of Oudh under section 307, Criminal Procedure Code. On the major charge he convicted the appellant under Section 304 as already stated. The learned Judge in a very full judgment discussed the whole of the evidence in detail. In regard to the beating of Bilasia he summed up his conclusions in these terms:

"This concludes the evidence of the prosecution witnesses regarding the beating. It certainly does not prove that the beating was a severe one, or that Bilasia died as a result of this beating, but I do feel that the manner in which the two ayahs have given their evidence, particularly Mt. Haliman, shows that they are withholding the truth, and the fact must be borne in mind when considering the prosecution evidence as a whole."

5. At the end of his judgment, however, he expressed the view that the appellant lost his self-control and beat the girl severely with a stick of substantial size. He concluded in these terms:

"Everyone is presumed to know the natural consequences of his actions and the knowledge which I impute to Mr. Singh is the knowledge that the excessive beating which he gave to Bilasia was likely to cause her death. I am not prepared to hold that the offence committed by him is of a lesser nature as there

is no reason to assume that Bilasia's death was due to some accidental cause which Mr. Singh could not have anticipated, such as the rupture of a diseased organ. Bilasia, so far as the evidence discloses, was a healthy girl and I do not think that there are any good grounds for holding that her death was occasioned by some physical abnormality, the existence of which was not known to Mr. Singh. The view I take is that Mr. Singh beat her recklessly and violently knowing that his blows were likely to cause her death. I am therefore of the opinion that he is guilty of the offence punishable under the second part of Section 304 Penal Code."

6. The reason why the learned Judge changed his view as to the severity of the beating established by the prosecution evidence is not clear. He could not act upon evidence which was not given, however much he may have felt that it ought to have been given. Their Lordships may observe that the theory which the learned Judge rejected that the girl may have died from an internal injury caused by the beating which manifested itself later in the evening at least afforded a rational explanation of the conduct attributed to the appellant. It is almost inconceivable that if the appellant, an educated man, a member of the Indian Civil Service, had beaten the girl to the point of death, he would have gone out for the evening without taking any steps to ensure that she received medical attention, and that his wife would have concurred in such procedure. Apart from considerations of humanity, the appellant must have realised that the death of the girl would place him in a very serious position.

7. With regard to the evidence as to the disposal of the body the learned Sessions Judge acted, as he was entitled to do, upon his own view of the evidence which the jury had rejected on the lesser charge. He accepted most of the evidence of the villagers who were said to have met the party when the tyre punctured and considered that such evidence established that Bilasia was not with the party at that time, a finding which destroyed much of the defence case; though it is to be noticed that no witness spoke of having seen the dead body of Bilasia. With regard to the production of the bones the learned Judge accepted the evidence of their having been pointed out by accused 3-5 and held that the bones might be the bones of Bilasia though he did not hold this to have been definitely proved.

8. On appeal the Chief Court of Oudh rejected the reference under Section 307 holding that there was evidence on which the jury were entitled to reach the conclusion they did, and that their verdict was not perverse. The Chief Court, however, went further than this and themselves considered the evidence, as they were

right in doing since the evidence as to the disposal of the body might be relevant on the charge under section 304. In the result they expressed the view that the jury's appreciation of the evidence was correct; they rejected the whole of the prosecution evidence as to the disposal of the body, and held that the bones produced were not those of Bilasia.

9. The Court then considered the evidence as to the killing of Bilasia at Lucknow and held that it was proved that the appellant gave such a beating to Bilasia that it ultimately resulted in her death, and that her dead body was removed in the car though the method of its disposal was not proved. In reaching this conclusion, however, the Chief Court used statements made by the Ayah Haliman and the chauffeur Mahabir under Section 164, Criminal Procedure Code, as substantive evidence of the truth of the facts stated. It is true that in their judgment the learned Judges say:

"We may add that the statements under Section 164 cannot be and have not been used as substantive pieces of evidence but only for such purposes as the law permits."

10. A perusal, however, of the whole of the judgment makes it apparent, in their Lordships view, that the statements were used as substantive evidence and it was for this reason that the appeal to His Majesty in Council was admitted. The learned Judges discussed in great detail the statements made by Haliman and Mahabir under Section 164 and gave reasons for accepting the facts, or most of the facts, deposed to in those statements, in preference to the evidence given by the witnesses in Court, which in no way helped the prosecution. This was an improper use of such statements. A statement under Section 164 can be used to cross-examine the person who made it, and the result may be to show that the evidence of the witness is false. But that does not establish that what he stated out of Court under Section 164 is true.

11. Mr. Roberts for the Crown did not attempt to justify the use made by the Chief Court of the statements under section 164. His contention was that two Courts in India have convicted the appellant; that there was evidence to justify such conviction, and that no injustice would be done by upholding it, and that there was no ground upon which this Board should interfere. This argument as at first presented ignored the fact that the two Courts in India differed materially in their view of much of the evidence, and ultimately Mr. Roberts was constrained to invite the Board to accept the appreciation of the evidence by the Sessions Judge in preference to that by the Chief Court. The story which the Chief Court rejected, namely that the body of Bilasia was placed in the appellant's car and taken as far as the place where the puncture occurred,

that the whole party proceeded from that place to the house of Bhanwar Singh leaving the corpse in the unattended car on a frequented road, that Bhanwar Singh without having enjoyed any previous opportunity of considering the matter at once ordered his servants to accompany Mahabir to the car and dispose of the body, and that the servants performed this task without apparently any regard to the serious consequences to themselves which might ensue, is not one calculated to carry conviction upon its own intrinsic merits. As a mere matter of probability, it would be reasonable to suppose that the dead body, if there was one, was disposed of by the appellant and Mahabir before arriving at Ramgarh Gularia without incurring the risk of introducing outside parties who might prove awkward witnesses; and that the journey to Ramgarh was continued in order to arrange with Bhanwar Singh a suitable story in case inquiries for Bilasia were instituted. It is clear that their Lordships could not reject the view which the Chief Court took of the evidence without themselves considering the evidence in detail. This is a course which the Board normally refuses to adopt in a criminal appeal, and their Lordships see no reason in this 'case' for departing from their usual practice of accepting the appreciation of evidence reached by the Court from which the appeal is brought.

12. Upon the finding of the Chief Court that the evidence as to the disposal of the body was unreliable and that the bones produced were not those of Bilasia, the case must rest, as the Chief Court recognized, on the Lucknow evidence as to the beating. On this view of the matter their Lordships find that the prosecution case is not proved. There is no evidence that Bilasia was beaten very severely; no one saw her in a state of collapse, and no one saw her dead body, and there is no evidence sufficient to justify a finding that Bilasia is dead. It is true that both the Courts in India disbelieved the reason given by the appellant to explain the midnight motor-car journey, holding that it was untrue and, indeed absurd, to suggest that such a journey was undertaken because the appellant could not face passing another night under the same roof as Bilasia; and their Lordships entirely concur in this view. The fact, that a long motor car journey was undertaken in the middle of the night, and that a false reason was given in explanation, raises a suspicion that the object of the journey may have been to dispose of the dead body of Bilasia, and that suspicion is much strengthened by finding that from the time when the motor-car left the appellant's house, Bilasia was never seen alive by any independent witness, and that admittedly she had disappeared the next day. The appellant has only himself to blame for much of the course which the case has taken. But suspicion is not proof. It is impossible to say that the only legitimate inference to be drawn from this motor-car journey and the disappearance of

Bilasia, is that the appellant killed Bilasia. Their Lordships are of opinion that the appeal must be allowed and the conviction of the appellant quashed and they have humbly advised His Majesty accordingly.

Appeal allowed.