

SUPREME COURT OF INDIA

Wilayat Khan

Vs.

State of U.P.

CrI.A.No.20 of 1951

(Saiyid Fazl Ali,J., Mehr Chand Mahajan and N.Chandrasekhara Aiyar,JJ.,)

25.05.1951

JUDGEMENT

Chandrasekhara Aiyar, J.,

1. The three appellants and another Abdul Hai Khan were tried by the Sessions Judge of Ghazipur for the murder of one Sikandar Khan, and they were acquitted. The state preferred an appeal against the acquittal of the High Court. The acquittal was set aside and they were convicted under Ss. 147 and 302/149, Penal Code, and sentenced to two years' rigorous imprisonment and transportation for life respectively, the sentences being made to run concurrently. The appellants have come up before this Court on special leave. Abdul Hai Khan, the other accused died in jail earlier.

2. The case for the prosecution shortly stated is this, Sikandar Khan, his son, Amanat Ullah Khan (P.W.1), and syce Munshwar Chamar (p. W. 7) left their village, Mania, at about 10-45 A. M. on 21-12-1947 to go to Dildarnagar to catch a train for Ghazipur, where they had to be present in connection with certain criminal proceedings arising out of the murder of one Munir Khan. They were joined on the way by Sitar Khan and Altaf Khan of the same village, who were going to Usia on their own business. Sikandar Khan was riding a horse. At about 12 noon when the party reached a place in the foot-path marked "I" in the site plan, five persons suddenly out of the thorny hedge called dubiki and four of them, two armed with spears and two with lathis, fell on Sikandar Khan and attached him. The four are Wilayat Khan, Usman Khan, Abdul Hai Khan and Quddus Khan. The fifth man, Jannat Khan, had a gun in his hand but he has not been tried as he is dated to have absconded. Sikandar Khan sustained injuries chiefly above the neck. There were five fissured fractured lines across the top of the head and he died on the spot. The son, Amant Ullah Khan, rode on horseback to Bhadaura Railway Station about 3/4 or one mile to the east, and despatched a telegram to the Police Sub-Inspector of Gahmar. He rode back to the scene of offence and from there proceeded to Dildanagar, 3 or 4 miles to the west, where he got the first information report (Exhibit P. 2) written by a school- master examined as P.W.2. The document gives the hour of report as 3 P.M/ (1 P.M. was corrected into 3). Investigation followed and the four accused named above were charged under Ss. 147, 149 and 302, Penal Code. In a carefully

prepared judgment, the Sessions judge held that it was improbable that the alleged eye witnesses really say the occurrence, and taking the view that the case against the accused had not been established beyond reasonable doubt, he acquitted them, agreeing with two out of the three assessors. The State preferred an appeal against the acquittal. The learned Judges of the High Court discussed the evidence in great detail. In their view, the four eye witnesses were speaking to facts which they saw and there was no reason for disbelieving them. So, they set aside the acquittal, held the accused guilty of rioting with deadly weapons and the murder of Sikandar Khan, and imposed on them the sentences already referred to. Abdul Hai Khan, the third accused, has not for some reason preferred any appeal.

3. Even in appeals against acquittals, powers of the High Court are as wide as in appeals from conviction. But there are two points to be borne in mind in this connection. One is that in an appeal from an acquittal, the presumption of innocence of the accused continues right up to the end; the second is that great weight should be attached to the view taken by the Sessions Judge before whom the trial was held and who had the opportunity of seeing and hearing the witnesses. The High Court did not ignore this consideration in this case for they state even at the outset "We may say that in approaching this appeal, we have borne in mind that owing to their acquittal by the learned Sessions Judge, the presumption of innocence in favour of the accused has in no way been weakened and that we would not be justified in interfering with his order until we are definitely able to say that the balance of evidence is distinctly against the accused." Having administered to themselves this caution so to say, they proceeded to discuss and weigh the evidence in meticulous detail. In doing so, they brushed aside several circumstances which weighed with the Sessions Judge as improbabilities in the prosecution story, with the result that they became convinced of its truth, even though they themselves were of the opinion that the evidence of the prosecution witnesses had to be subjected to close scrutiny, having regard to the admitted existence of party feelings and enmity between the accused and the eye witnesses.

4. The village of Mania was torn by two rival factions, one under the leadership of Sikandar Khan and the other under the leadership of Munir Khan. Munir Khan had been murdered in June 1947 and P. W. 1, Amanat Ullah Khan, was one of the persons prosecuted for that murder. After Sikandar Khan's death, P. W. 1 has become the leader of the party. Sitare Khan and Altaf Khan belong to his party. The accused belong to the opposite party and are related to each other. The first three are sons of sisters; the absconding accused, Jannat Khan, is the nephew of the first accused. There were previous criminal proceedings in which three of the present appellants figured as accused for causing injuries to Sikandar Khan. The open hostility between the two parties is as much a wound of motive for the murder as it is for the fabrication of a false case against the enemies. It is in this set up or with this background that we have to approach, this case.

5. A few facts stand out prominently as circumstances that may be said to tilt the scale in favour of the accused. In the first place, the telegram that P. W. 1 gave to the signaller at Bhadaura Railway Station almost immediately after the murder does not mention the names of the assailants even if we are prepared to overlook the use of the word 'mulzim' in singular. If we accept the evidence of the Assistant Station Master, Sheobans Singh (D. W. 3) that it

was one Ram Singh who accompanied Amanat Ullah and who said that Sikandar Khan had been murdered and that Amanat Ullah told him that Ram Singh had actually seen the dead body, it is obvious that Amanat Ullah was not an eye-witness. The High Court rejected his testimony for reasons which do not appear to be conclusive, but even so, the fact remains that Amanat Ullah did not tell D. W. 3 who were the men that murdered his father. The second fact of importance is that if two men armed with spears and two with lathis attacked Sikandar Khan simultaneously, felled him down from the home and beat him even after he lay prostrate on the ground, it is difficult to believe that the spears would have been used so sparingly or lightly as to cause only mild scratches or very minor incised wounds neither deep, nor long, nor wide. Thirdly, the four men, P. Ws.1, 4, 5 and 7, would not have been allowed to remain two or three paces from Sikandar Khan and witness the incident from beginning to end. Jannat Khan, with a gun, would have chased them away and the evidence is that he pointed the gun at them and asked them not to come near and told them that "if we proceeded further, he would shoot us". It may be that afraid of the gun and of a probable attack against themselves, the four men did nothing to prevent the occurrence. But it is somewhat difficult to believe that Jannat would have allowed them to stay there and have a full view of the murder. Again as pointed out by the Sessions judge, it is difficulty to accept the story that Sitare Khan and Altaf Khan left the scene of occurrence as soon as some people came from Mania, and were not available for being examined by the police officer who came to the place at about 5 p. m. Men from the village might have come; but there was absolutely no reason why these two persons made themselves scarce. It appears to be a lame explanation that was given for their not being available for examination then and there, and that time was required to make up the story. Their names are no doubt given in the first information report, but there are no details, which had apparently to be thought out later.

6. The inference that the Sessions Judge drew from these circumstances that the witnesses did not probably see the occurrence, but came on the scene after the murder, and evolved a probable story against their enemies is not far-fetched or unreasonable. His conclusion appears to us to be more sound than the one reached by the High Court who discounted the weight to be attached to the infirmities by a process of rather far-fetched reasoning. For instance, while Amanat Ullah Khan says that the way from his village of Mania to Dildarnagar lies through Bhadaura and Usia, the learned Judges state that Bhadaura is not exactly on the road to Dildarnagar. Bhadaura is a comparatively busy centre where a market held twice a week and there is nothing is strange or improbable in Amanat Ullah Khan leaving the company of his father, who was going on horseback through a foot-path and himself going to Bhadaura. It was by no means a very round about route. In the ordinary course of events, the telegram (Ext. P-1) must have been given to the Assistant Station Master a few minutes before, its dispatch at 2-30 p. m. and yet the learned Judges say that they were not prepared to accept the Assistant station Master's, evidence that Amanat Ullah Khan came to him at 2-15 p. m. The use of the word 'mulzim' in singular is got over by the explanation that Amanat Ullah Khan is a semiliterate person who cannot write with case. But the cardinal point of importance in this case that the names of the accused were not given in the telegram (Ex. P-1) is not met by the High Court except by the suggestion that a man might well hesitate for obvious reason to give out names in a telegram which can be read by anybody, for one would have expected a person like Amanat Ullah Khan, who had just witnessed a fatal assault on his father by five armed men, to give out the names of the

assailants forthwith, had he seen them. The betel-seller, Baij Nath, who said that Amanat Ullah Khan was chewing betel at his shop at about 2 p.m, and it was there that he heard from Ram Singh that his father had been killed may not be believed for the reasons given by the High Court. But there is nothing in the evidence of the Assistant Station Master to show that he was an interested witness and was stating facts which were not true. It appeared to the High Court that there was nothing unnatural in Sitare Khan and Altaf Khan leaving the place of occurrence merely because people had arrived from Mania a little before sunset, but it does strike us as rather strange that they chose to absent themselves for no satisfactory reason, especially when the police were expected any moment. There is nothing improbable in Amanat Ullah Khan mentioning their names in his report when it is remembered that they belonged to his party, were co-accused with him in proceedings under S. 107, Criminal P. C., and were obviously his associates or henchmen, who would only be ready to say what was expected of them. Much attention need not be paid to the syce Muneshar Chamar. In dealing with the injuries found on Sikandar Khan, the learned Judges say "We don't think that the evidence of witnesses is of such a character as to be inconsistent with the medical evidence". The test rather is whether it is inconsistent with the medical evidence and, if not, whether the accused should not get the benefit.

7. Interference with an order of acquittal made by a Judge who had the advantage of hearing the witnesses and observing their demeanour can only be for compelling reasons and not on a nice balancing of probabilities and improbabilities, and certainly not because a different view could be taken of the evidence or the facts. As stated already, we feel that the grounds which have been given by the High Court for setting aside the order of acquittal are not such as to show that the conclusion arrived at by the Sessions Judge was not the proper one to reach.

8. We allow the appeal and restore the order of the Sessions Judge, which means that the appellants will stand acquitted of the charges against them. They will be set at liberty.

9. Appeal allowed.