

# SUPREME COURT OF INDIA

Pangambam Kalanjoy Singh

Vs.

State of Manipur

CrL.A.No. 72 of 1951

(Mehr Chand Mahajan, N. Chandrasekhara Aiyar and Vivian Bose, JJ.)

24.04.1952

## JUDGEMENT

### **BOSE, J.:**

1. This is an appeal from a conviction for murder and a sentence of death. The appellant was tried by the Judicial Commissioner of Manipur, a Part C State to which the Criminal Procedure Code does not apply but to which the Indian Evidence Act does.

2. Though the Code of Criminal Procedure does not apply to Manipur, the trial has been substantially in accordance with the procedure laid down by that Code. But as there is no appellate tribunal in the State for a case of this kind, we have heard the appeal as a Court of Ordinary appeal and have gone into the evidence.

3. Two women were killed late in the night of 4th/5th August 1951. They were the wife and mother-in-law of the appellant. The two were not living in the appellant's house but in the house of the mother-in-law. There had been some estrangement between the husband and wife, and the wife was not at the time living with the appellant.

4. That the women were murdered is beyond dispute. They were savagely attacked with a sharp edged weapon and literally hacked to death. One had ten injuries on her person and the other eight.

5. The crime was first discovered by Bino Singh, P. W. 10. He says he heard cries in the night from the house of these women. It was then dark, so he shouted to his mother-in-law Angang Ibema Debi. P. W. 7, to bring a lamp. She did so and the two went to the house in question and found one of the women dead and the other unconscious.

Aber Singh, P.W. 9. Who heard the cries about the same time, also went to the spot and found the other two witnesses (P.Ws. 7 and 10) already there. Aber Singh (P.W. 9) and Bino Singh (P.W. 10) say they noticed a hole in the wall and also the scabbard of a Khukri. According to the latter the scabbard was wrapped in a comforter hanging on a loom.

6. The news spread and Bino Singh (P.W. 10), among others, went and informed the chaukidar Mohuri Singh, P. W. 6, of what had occurred. The chaukidar first went to the scene of the occurrence and saw for himself what had happened and then he went to Police Station, about 3 1/2 miles distant, and made the First Information Report at 7 in the morning.

He tells us in his evidence that he noticed the hole in the wall when he went to see what had happened but did not notice the scabbard of the Khukri. He says he mentioned the fact that the scabbard was there in his report because Aber Singh, P. W. 9, who accompanied him to the police Station, told him that an empty scabbard of a Khukri was also lying in the house.

7. Pausing here awhile, it is curious that Bino Singh, who says he also saw a knife which has been seized and produced as Ex. P- 4, did not tell the chaukidar about the knife but only mentioned the empty scabbard. We say this because the first Information Report mentions the scabbard but not the knife. It is also a curious fact that the scabbard belongs to the chaukidar who made the report and not to the appellant.

8. The First Information Report states, among other things, that there was a hole in the wall of the house through which the murderer had entered. It also states that the scabbard of a Khukri was found there and that.

"the murderer is not yet known. It cannot be ascertained, as yet, how many persons entered and did the action".

9. Soon after this was recorded, a procession carrying two women, one dead and the other still senseless, reached the Police Station. The appellant was among them, and the Sub-Inspector, P. W. 12, tells us that he arrested the appellant immediately he came because one of his spies, whom he refused to name, told him immediately after he had recorded the First Information Report that the appellant had some enmity against the women and was probably the culprit. He says that because of this information he arrested the appellant "at the very moment he reached the police station."

10. After this, the police went to the spot and searched the place. The Sub-Inspector noticed the hole in the wall and says that the appellant drew his attention to it. From there the police went to the chaukidar's house because, according to the Sub Inspector, the appellant had already given him certain information about a Khukri. The Sub-Inspector admits that he had recorded the appellant's statement immediately after the arrest but no copy of the material portion relating to this discovery has been placed on record.

11. The Sub-Inspector continues :

"On the information supplied by the accused I went to the house of Mohuri Singh chaukidar for recovery of Khukri (the weapon of offence). The chaukidar was absent. But his wife was present in the house. No sooner I began to search the house the chaukidar had arrived. "On my asking the chaukidar about the khukri which was handed over to him by the accused last night", he went to anullah just near-by and took out the khukri Ex. P-1 from inside the water in my presence. I arrested the chaukidar also at his house after recovery of the khukri.

12. The chaukidar corroborates this. It is clear from his statement that, after giving the first information report, he was not interrogated by the police and that he did not see them again till he met them at his house. He says :

"On my return I found the police party along with the accused at my house. There I was asked by the Thana Babu to produce the Khukri which the accused had returned to me the previous night".

13. The importance of this is that the police knew that the appellant was supposed to have taken a Khukri from the chaukidar's house and returned it in the middle of the night before they reached the

chaukidar's house and returned it in the middle of the night before they reached the chaukidar's house and that they did not learn of this from the chaukidar because he had said in his First Information Report that he did not know who the murderers were and did not know who the murderers were and did not say that the scabbard was his.

As there had been no contact between the chaukidar and the police from the time the chaukidar made the first Information Report down to the time he met the police at his house, it is evident that the police did not discover the fact that the appellant had returned the dagger to the chaukidar in the middle of the night from the chaukidar. There is nothing to indicate how they came to know of this fact at that time.

14. It is also evident from this, if the evidence is true, that the chaukidar must have known that the appellant was the murderer or, at the very least, must have suspected the fact when he went to make the First Information Report, otherwise, there was no point in his throwing his own Khukri into a nala immediately before setting out to make the report.

15. The only other pieces of evidence against the appellant, apart from his confession with which we will deal in a moment, are (1) the fact that he was not living with his wife evidently owing to some sort of estrangement, (2) if Apabi Debi (P.W. 5), a girl who appeared to the learned Judicial Commissioner to be about 10 or 12, is to be believed, the appellant had caught hold of his wife's sari the previous day and pulled out a Khukri and the wife had, complained to the girl about the appellant's behaviour, and (3) the fact related by Nangbi Devi (P.W. 4), the chaukidar's wife, that the appellant had come to her husband's house the previous day and borrowed a Khukri despite her remonstrances.

16. It is clear that this evidence would not be sufficient for a conviction. The hole in the wall was not discovered because of anything the appellant had said nor was the Khukri. In any event, no blood stains were found on the Khukri, naturally enough, because it had been lying in water for several hours.

17. We now turn to the confession. It was made at 1-10 P.M. on the 6th but was retracted at the earliest opportunity, namely before the Committing Magistrate, and this retraction was adhered to in the Court of the Judicial commissioner. The confession is inculpatory but corroboration is necessary because of the retraction.

18. The confession speaks about the grudge the appellant had against these two women because of his wife refusing to live with him and because the mother-in-law encouraged her in that. It also refers to the hole in the wall and describes the murders. Then it says :

"In that very house I was determined to die myself and I managed to thrust a knife available in that house into my throat..... After I had begun to pierce my throat, I found that I could not die. Then I thought again that if we three died together there would be troubles as to not knowing the cause of death to the villagers..... For showing signs that I killed them, I left the cover of the Khukri, the muffler, ganji and one rubber shoe outside, but in a secure place of the house.

I proceeded with the Khukri to the house of the son of my uncle Pargambam Mohori Singh (P.W.6). Then I caused my sister-in-law open the door of her house and put inside stealthily the Khukri by the side of her almirah. After saying to her that I came to ask whether my brother had returned home, I returned home and went to bed. On the following morning I went to the Thana along with

the villagers who carried my wife in a dying condition".

19. So far as the attempt at suicide is concerned, all we have by way of corroboration is a tiny cut on the throat 1/4" by 1/6" and only skin deep. It is hardly type of wound one would expect from a desperate man determined to cut his throat with a sharp weapon like the knife, Ex. P-4. In the Judicial Commissioner's Court the appellant gave the following explanation regarding the injury on his neck. He said :

"The injury on the neck was due to the striking of the point fuel wood which I was cutting."

In the Committing Magistrate's Court a long rambling question, mixing up a number of different facts, was put to the appellant and it is not surprising that he, getting confused, did not reply on this point. The doctor P. W. 1, however, says that the injury could have been caused by a sharply pointed dry branch of a tree. This accords with the explanation given by the appellant. Accordingly, this injury is satisfactorily accounted for.

20. In the second place, the chaukidar's wife Nangbi Devi, P. W. 4, does not corroborate the confession. Firstly, the confession says nothing about getting a Khukri from her house and taking it away despite her protests. Secondly, the witness says nothing about the appellant coming to the house in the middle of the night and hiding the Khukri behind the almirah. It is true she would not have known anything about the Khukri because the appellant says in the confession that he hid it stealthily, but one would have expected her to mention the fact of this very unusual visit in the middle of the night.

As against this, the chaukidar, P.W. 6, directly contradicts this part of the confession. It is significant that the appellant made this statement, which cannot be true, after he had heard the chaukidar's statement when the police were searching the house and just before they arrested the chaukidar himself and after the appellant knew that the chaukidar had thrown the Khukri into the nala and recovered it from there.

21. The chaukidar is a very unsatisfactory witness and the learned Judicial Commissioner comments on his unsatisfactory demeanour. It is evident that he has not told the whole truth. It is also evident that the reasons given in the confession for the appellant's action after the murder are untrue. If he really wanted the villagers to know who had caused the murders, naturally he would have given himself upon, failing that, he would at least have left the Khukri, with which the murders were committed, behind and not the merely the scabbard. It was pointless to leave behind a muffler, a ganji and one rubber shoe, which no one says are the appellant's, just for the purpose of inculcating himself.

22. Weighing the evidence as a whole, we are of opinion that there are large elements of doubt and that it would be unsafe to convict. Giving the appellant the benefit of the doubt, we set aside the conviction and sentence and direct that the appellant be released.

Appeal allowed.

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