SUPREME COURT OF INDIA

Santa Singh

Vs.

State of Punjab

Crl.A.No.123 of 1955

(Vivian Bose, B. Jagannadhadas, B. P. Sinha, S. J. Imam and N. Chandrasekhara Aiyar, JJ.)

02.02.1955

JUDGEMENT

CHANDRASEKHARA AIYAR, J.

1. The appellant Santa Singh was convicted of the murder of Labh Singh and sentenced to death by the Additional Sessions Judge, Amritsar. The sentence was confirmed by the Punjab High Court. The appellant has come before this Court on Special leave.

2. The prosecution case is that the occurrence took place at about noon on the 10th day of September, 1954. That morning, there was a quarrel between the appellant and the deceased over the disappearance of the wife of one Buta Singh, as the deceased alleged that the appellant's grandfather was responsible for the abduction.

After this wrangle, the deceased and his brother Uttam Singh (P. W. 16) went to their fields. They returned at about noon and when they reached close to the Gurdwara, they decided to bathe at the well there. Mohinder Singh (P. W. 17) and Khem Singh (P. W. 18) were already bathing at the place. After the baths were over, all the four were proceeding to their houses.

The deceased was at some distance ahead of the rest. After a short while, the appellant met them and there was again an exchange of words between him and the deceased. The appellant, who had a rifle with him, shot at Labh Singh from behind his back as he was attempting to run away. Labh Singh died on the spot. The small intestines were torn up and the left kidney was found smashed.

3. Uttam Singh (P. W. 16) brother of the deceased, Mohinder Singh (P. W. 17) and Khem Singh (P. W. 18) are the eye-witnesses. Their evidence was accepted by the Sessions judge and by the High Court. Ordinarily if there were no special circumstances, this Court would not interfere with the conviction.

4. There are, however, some features in this case which make it unsafe in our opinion to uphold the conclusion of guilt.

5. The circular would of entry at the back of the deceased, 1/4" in diameter, had burnt inverted margins according to the doctor who conducted the postmortem examination.

The ballistic expert, Dr. Goyle, examined as P. W. 11, said that if there were burnt edges of the wound, the distance between the muzzle and the victim would only be a few inches and not more

than nine inches. This opinion is in substantial accord with what is found in some of the text books on medical jurisprudence.

For instance, it is started in Taylor's Principles and Practice of Medical Jurisprudence, Vol. I, 10th Edition, at page 441, under the heading "Burning of the Wound".

"It is impossible to state rules as to the precise distance from which it is possible to produce marks of burning, for this depends on the quantity and nature of the powder, the method of charging, and the nature of the weapon. It is unusual, however, to get marks of burning beyond a yard or a yard and a half with a shot gun, or at more than half a yard with a revolver".

6. There are two plans in the case, one called the site plan prepared by the Sub-Inspector of Police P. W. 20 and another prepared by the draftsman, P. W. 10 on the 14th September.

All the three eye-witnesses say that they pointed out to Head Constable and the Sub-Inspector the places where the accused was standing when he fired the rifle and where the deceased was standing when he was shot; but when it comes to the draftsman it is only Uttam Singh (P. W. 16) and Khem Singh (P. W. 18) who state that they showed the two places to him.

The draftsman's evidence is that all the three pointed out to him the two places and that the marginal notes which he appended to the plan were correct. The distance between the two places is shown as 25 feet. Even if we rule out under S. 162 of the Criminal Procedure Code as inadmissible what the witnesses told the Head Constable and the Sub-Inspector, there is no such bar to the evidence given by the draftsman.

If the draftsman is asked to prepare a sketch map of the place of the occurrence, and if after ascertaining from the witnesses where exactly the assailant and the victim stood at the time of the commission of the offence and the draftsman measures the distance between the two places thus shown to him and puts it down on the plan, and further, if the witnesses corroborate his statement that they showed him the places, it is somewhat difficult to see how this is not legal evidence and why it is inadmissible. The decisions cited by Mr. Bindra for the State are distinguishable.

7. In 'Ibra Akanda v. Emperor' 1944 Cal 339 (AIR V 31) (A), we had only the Sub-Inspector's map in which there was a remark about the distance which he derived from statements made to him as investigating officer. The case - 'Kalia v. Emperor', 1925 Cal 959 (AIR V 12) (B), contains no specific reference to S. 162 of the Criminal Procedure Code. The relevant passage is in these terms:-

"Then comes the fourth point, Exhibit 5. It is true that the map does contain upon it certain things which must have been supplied to the Police Officer by some person, for instance there appear on the map against the letter "S" these words: "This is the position of the witness Daulat' and so on. Now strictly speaking the map should not have been admitted in this form unless there had been the evidence of Daulat as to what he said to the officer and the evidence of the Police Officer as to what Daulat told him which would have made it evidence.

8. In 'Bhagirathi Chowdhury v. King-Emperor', 1926 Cal 550 (AIR V 13) (C), the map had been prepared by the Sub-Inspector. It is no doubt true that in the absence of the witnesses who gave the information the remark of the Sub-Inspector would be hearsay; but in the present case we are not concerned with the Sub-Inspector's site sketch but with the plan prepared by a draftsman who derived information from the eye-witnesses about the places 1 and 2 and his evidence read with the map he prepared means that he measured the distance between the two places and made a note of it

on the map.

It is not unusual to have plan drawn up by a draftsman and this is not done to evade the provisions of section 162 of the Criminal Procedure Code.

9. The decision of the Supreme Court in -'Ram Kishan Mithanlal Sharma v. State of Bombay', 1955 SC 104 ((S) AIR V 42) (D) deals specifically with identification parades held by the police and under their supervision and control and it was held that statements made by the witnesses identifying particular accused as involved in the occurrence would be inadmissible under section 162.

In so holding, this court preferred the view of the Calcutta and Allahabad High Court to the view expressed by the Madras High Court and the judicial Commissioner's Court at Nagpur.

But in the same case it is pointed out at page 115 that if after arranging the parade the police leave the field, so to say, and allow the identification to be made under the exclusive direction and supervision of the panch witnesses, the statements of the identifying witnesses would be outside the purview of section 162.

There is nothing whatever in the present case to show that the map prepared by the draftsman was in the presence of the police and that the eye-witnesses then showed two places to him as the place where the deceased and the accused stood.

On the other hand, the Sub-Inspector of Police says that he was in the village only on the 10th and 11th of September. According to the draftsman, the sketch was prepared by him on the 14th of September. Thus there is no question of any statement made to the police.

Nor is the evidence hearsay because (1) the eye-witnesses have been called and they say that they showed the different spots to the draftsman and (2) in so far as the distance is concerned the draftsman himself measured them as he swears in the witness-box that the distances shown in the sketch are correct.

10. Any other view would render it difficult to prove the places where the assailant and the victim stood or the distance between the two spots or the place from which the witnesses saw the occurrence.

11. According to the medical evidence, therefore, the shot was fired from very close range about 9 inches to a yard or a yard and a half but according to what was shown to the draftsman by the eye-witnesses, the rifle was fired from a range of about 25 feet.

In the judgment of the High Court this difficulty is sought to be surmounted by the observation that it might not be safe to act on the pointing out of the places four days after the occurrence, but this attempt, is not of much avail as they were not giving an estimate of the distance but showed of the draftsman the particular spots where the appellant and the deceased stood at the time of firing.

12. There is another element in the case which creates even greater difficulty. An empty cartridge case is alleged to have been recovered from the place of occurrence by the police on the 10th of September when they went there for investigation after receipt of the first information from Uttam Singh (P. W. 16); so also some blood-stained earth.

They were carefully packed and sealed in two separate packets and despatched to the Police Station. The sealed parcel of the earth was sent to the Chemical Examiner at Kasauli on the 11th October, 1954 and the scaled parcel of the empty cartridge case was sent to Dr. Goyal as late as the 27th October, 1954.

Even if we accept the explanation given by the Sub-Inspector of Police that the empty cartridge case had to be kept at the Police Station till the rifle used was recovered so that both might be sent to the expert for his opinion, nothing has been stated why after the rifle was recovered on the 26th September, 1954, along with 24 cartridges from the house of the accused, it was incumbent for the Police to retain the parcels of rifle and empty cartridge case with them till the 11th October, 1954.

Naturally this inordinate delay raises much suspicion and has given to the suggestion on the part of the accused made in the course of the cross-examination of the Sub-Inspector that the empty cartridge case ultimately sent to the expert relates to a cartridge that was fired by them at the Police Station and is not the one recovered at the spot.

The memo relating to the recovery of the empty cartridge case is not attested by any independent witness but only but Uttam Singh and Mohinder Singh (P. W. 16 and P. W. 17)

13. Yet another circumstance which has not been explained on the side of the prosecution is the fact that the accused though actually arrested on the 14th September and brought to the Police Station on the 21st September was not interrogated by the Sub-Inspector till the 26th September.

14. Thus, in the face of the medical evidence the testimony of the eye-witnesses cannot be safely accepted, the suspicious delays that have occurred as regards important steps in the course of the investigation render it unsafe to hold that the case of the prosecution has been established beyond reasonable doubt.

15. The appellant is acquitted of the charge. The sentence of death is set aside and he will be set at liberty.

(Judgment of JAGANNADHADAS AND SINHA, JJ. was delivered by JAGANNADHADAS, J. :

16. The judgment of some of our learned brethren just delivered reversing the conviction of the appellant by the Sessions Judge which was confirmed by the High Court is based on three grounds.

1. The testimony of eye-witnesses is in conflict with the medical evidence and cannot be safely accepted.

2. There was inordinate delay in sending the sealed parcels of (a) the empty cartridge case recovered from the scene of occurrence and (b) the rifle recovered from the house of the appellant, for the opinion of the ballistic expert, Dr. Goyle.

3. The accused, though actually arrested on the 14th September, 1954 and brought to the police Station on the 21st September, 1954, was not interrogated by the Sub-Inspector till the 26th September, 1954. The above suspicious features 2 and 3 throw doubt on the bona fides of the investigation.

17. This being a case involving death sentence and in view of the inclination of our learned brethren that, in a case of this kind where there are strong suspicious features relating to investigation, it is

unsafe to go merely by partisan oral evidence, who do not consider it necessary to differ from the order of acquittal.

But we would base our agreement with the result only on ground 2 and 3 above mentioned. These two features - and in particular ground No. 2 - have been specified brought out in the cross - examination of the prosecution witnesses and have been made the subject-matter of attack before the trial court and appellate court.

But is somewhat surprising that neither court has dealt with these two features in its judgment. If, as has been suggested by the defence in cross-examination of the Assistant Sub-Inspector, P.W. 20 the empty cartridge case sent to the ballistic expert was not the one recovered from the scene of occurrence but one fired at the police Station from out of those recovered from the appellant's residence, the most important corroboration of the evidence of the eye-witnesses disappears and grave doubt arises as to the truth of the prosecution evidence.

18. With very great respect, however, we feel constrained to express our dissent from the view taken as regards the first ground relating to the alleged conflict of oral evidence with that of the ballistic expert.

Apart from the consideration which has weighted with the High Court that the evidence of the expert in such matter cannot be treated as being so decisive as to falsify the oral evidence otherwise acceptable, our serious objection to basing a reversal on this ground is that the alleged conflict cannot be said to have been made out on the evidence as its stands and that the evidence in this behalf is inadmissible.

The evidence is that of the draftsman who has prepared a plan of the scene of occurrence showing therein the distance between the place wherefrom the accused fired the rifle and where the deceased was standing at the time as being about 25 feet. In our opinion this evidence in inadmissible.

We feel, therefore, bound to deal with this matter and express our opinion since it involves a much larger question of law than what it involved in this particular case and since the opposite view taken would, in our opinion, have the effect of weakening the authority of a previous decision of this Court.

19. The question involved in whether evidence as to the pointing out of the distances by the witnesses to the draftsman in the course of the investigation by the police is admissible, having regard to section 162 of the Criminal Procedure Code. It appears to us that this is covered by the decision of this court in 1955 SC 104 ((s) AIR V 42) (D).

It has been sought to distinguish the same by pointing out that the case referred to admissibility of evidence relating to identification parades. While that is perfectly true, the point dealt with there was whether the evidence given by a witness, of previous identification at an identification parade held by the police during investigation is not virtually evidence of a previous statement in the course of investigation and hence inadmissible.

The point decided is that such evidence is in effect that of a previous statement and is inadmissible, whether given by the police officer or by any other person to whom the statement is made, if it was in the presence of the police officer and in the course of investigation by him.

The point has been dealt with specifically at pages 114 and 115 of the report of that case.

20. The evidence relating to the pointing of the distance in the present case is as follows.

The Assistant Sub-Inspector, P.W. 20, who conducted the investigation stated as follows :

"I prepared the rough site plan Ex. P-J and also got the plan Ex. P-A prepared by Des Raj draftsman."

The draftsman, Des, Raj, who is P.W. 10 says as follows :

"The plan, Ex. P-A, was prepared by me on 14th September, 1954 to a scale of ten Karams to an inch at the instance of the police and on the pointing out of witnesses Khem Singh, Mohinder Singh and Uttam Singh. The marginal notes were recorded by me and were correct."

He does not say on what date the pointing out was done by the witnesses and whether or not the police were there at the time. But the eye-witnesses themselves have given evidence on this matter which leaves no room for doubt. Of the three eye-witnesses who have been examined as P.Ws. 16, 17 and 18 respectively, P.W. 17 does not support the draftsman. P.W. 16 says as follows in his chief-examination.

"I came with the police to the village and joined the investigation of the case".

In his cross-examination he says -

"I came to the spot with the police about 1 p.m. ..... 1 pointed out to the Head Constable and to the Sub-Inspector the places where the accused was standing when he fired the rifle shot, and also the place where by brother Labh Singh was standing and he was fired at. I also pointed out those places to the draftsman."

P.W. 18 says -

"I pointed out to the police and the draftsman the places where Labh Singh was standing when he was shot and also where Santa Singh was standing when he fired the shot. Mohinder Singh also pointed out these places to the draftsman."

On this evidence it appears to us that the only reasonable conclusion is that the pointing out of the distance of the draftsman was in the very presence of the police officer and that it was incidental to the pointing out of the distance to the investigating officer on the spot, in the course of the investigation on the 10th itself.

It appears to out mind; therefore difficult to distinguish this case from the above cited case. It falls clearly within the principle elaborately considered and laid down at pages 114 and 115 of the judgment of this court in 1955 SC 104 ((S) AIR V. 42 (D).

In our opinion the evidence of the draftsman taken with what he has noted on the map can only be treated as evidence of prior statements, as to distance, of the eye-witnesses in the course of investigation by the police and is, therefore, inadmissible in this case either as substantive or as corroborative evidence, amplifying the evidence given by the eye-witnesses.

21. In the view that such evidence is virtually of prior statements of the prosecution witnesses made in the course of investigation, it can only be availed of on behalf of the accused for contradicting

and discrediting the oral evidence of the eye witnesses.

That, however, is not the use that is sought to be made of it before us on behalf of the appellant. The use now sought to be made of this evidence is to supplement that of the eye-witnesses and to establish its conflict with medical evidence and thereby to discredit it. That appears to us not to be permissible.

If the evidence was intended to be used for contradiction of the eye-witness, the way to do it is, somewhat as follows. The witnesses may have been asked in cross-examination to speak to the approximate distances.

If the distances, so spoken to, are very much less than about 25 feet, the previous statements made by the witnesses to the police and the draftsman in the course of the investigation should been specifically brought home to them and the contradiction elicited.

This may be a rather elaborate process.

But in a matter so important in its use as falsifying the direct evidence of the prosecution witnesses, it appears to us, with respect, that no short-cut can be entertained.

The responsibility is as much on the accused as on the prosecution to place on record legal evidence in a legally permissible way. It appears to us that this is the reason why the High Court did not accept this evidence of distance when it said.

"no question was put to Uttam Singh, P. W. 16, and Khem Singh, P. W. 18 to ascertain the distance between Labh Singh and Santa Singh at the time of firing."

Sitting in an appeal on special leave we can find no particular reason for ignoring the categorical finding of the High Court that "it is not proved that Santa Singh fired at Labh Singh from a distance of 25 feet."

We are, therefore, unable to agree that in this case any permissible contradiction of the evidence of the eye-witnesses which tends to falsify it has been brought out by the use of the draftsman's evidence and the map he has prepared.

Appeal allowed.

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