Niranjan Singh

Vs

The State of Uttar Pradesh

Criminal Appeals Nos. 60 and 61 of 1956

(P. Govinda Menon, S. K. Das, N. H. Bhagwati, Syed Jafar Imam JJ)

03.10.1956

JUDGMENT

GOVINDA MENON J. -

On September 6, 1955, this court granted the appellants herein, special leave to appeal under art. 136(1) of the Constitution from the judgment and order dated August 4, 1955, of the Allahabad High Court, in Criminal Appeal No. 298 of 1955 (Reference No. 31 of 1955) connected with Criminal Appeals Nos. 299 and 307 of 1955, limited to the question whether the failure to comply with the rules relating to the submission of the police case diary, vitiates the entire trial and what the consequences of such failure are. It is in pursuance to the leave so granted, that Criminal Appeal No. 60 of 1956, has been preferred by accused Nos. 4, 7, 1, 3, 5 & 2 (Niranjan Singh, Tikam Singh, Kharak Singh, Harpal Singh, Sardar Singh and Satpal Singh) respectively in Sessions Trial No. 142 of 1954, in the court of Session at Meerut and Criminal Appeal No. 61 of 1956, is preferred by accused No. 6 (Udaibir Singh) in the same Sessions trial. Appellants 1 to 3 in Criminal Appeal No. 60 of 1956 (accused Nos. 4, 7 & 1, Niranjan Singh, Tikam Singh and Kharak Singh) have been sentenced to the extreme penalty of the law and the remaining appellants in that appeal sentenced to imprisonment for life. The appellant (accused No. 6) in Appeal No. 61 of 1956, has also been sentenced to death.

On the night between February 28, and March 1, 1954, a dacoity took place in the house of Atal Singh in the village of Akheypur in which about twenty dacoits took part and considerable property was looted and taken away by the dacoits. During the course of this incident four members of the family of Atal Singh, including himself, were shot dead and another received gun-shot wounds as a result of which he died subsequently in the hospitals. Four other members of the family received gun-shot wounds and incised wounds at the hands of the dacoits but they survived as a result of treatment in the hospital.

The prosecution case was that among the dacoits who took part were the seven appellants in these two appeals, as well as two others; and of them accused No. 1 (Kharak Singh), accused No. 4 (Niranjan Singh), accused No. 6 (Udaibir Singh) and accused No. 7 (Tikam Singh) were armed with guns and as such were responsible for the shooting and murders. The two others namely, Achhpal Singh and Deoki Saran alias Beg Saran, who figured as accused Nos. 8 & 9 respectively in the court of Sessions, were acquitted by the learned Sessions Judge, who, after an analysis of the large volume of evidence, found that all the appellants herein were guilty of an offence under S. 396 of the Indian Penal Code and sentenced accused Nos. 1, 4, 6 and 7 (Kharak Singh, Niranjan Singh, Udaibir Singh and Tikam Singh) to death and accused Nos. 2, 3 & 5 (Satpal Singh, Harpal Singh and Sardar Singh) to imprisonment for life as hereinbefore mentioned. On appeal to the High Court

of Judicature at Allahabad, the learned Judges (Asthana and Roy JJ.) confirmed the convictions and sentences and dismissed the appeals. As stated already, leave to appeal to this court under art. 136 was granted restricted to the question outlined by us at the beginning.

The prosecution case is that the village of Akheypur is a factious one in which one Narain Singh, the brother of the 4th accused, was the leader of one party and Atal Singh, one of the deceased, was the leader of the other. Consequently the dacoity and murders in the house of Atal Singh took place as a matter of revenge. Shortly stated, the case put forward on behalf of the prosecution is that the appellants and others, some of whom were armed with guns, raided the house of Atal Singh on the night in question. The inmates of the house and others were inflicted injuries and the dacoits after looting the house carried away valuable property. It is not suggested that if the facts spoken to by the prosecution witnesses, who are eye-witnesses, are true, then an offence under s. 396 of the Indian Penal Code has not been amply proved; but the only question in whether the appellants took part in the crime.

That a dacoity took place in the house of Atal Singh admits of no doubt and the appellants do not deny the occurrence, but it is the case of accused Nos. 4 and 7 (Niranjan Singh and Tikam Singh) that while the dacoity was in progress, they, along with the other residents of the village, had gone to the enclosure of Sardar Singh and Daryao Singh, close to the house of Atal Singh, armed with guns with the object of giving assistance and succour to the inmates of the house and it was they who opened fire from that place on the dacoits, compelling them to take to their heels as a result of the firing, and that after the dacoits had left the scene of occurrence, they, as well as others, proceeded to Atal Singh's house where Dharam Singh and other persons requested them to go to the Police Station at Kithore on their motor-cycle in order to make a report to the police. It is further alleged that both of them went to Kithore police station and reported the occurrence to the Sub-Inspector Dalbir Singh (P. W. 28) who was in charge of the police station and on the direction given by him, they went to the police station Garhmukteshwar to give information. In short, the defence is that these two accused were good Samaritans who tried to help the family of Atal Singh in their hour of dire need and not the assailants. The other appellants denied the charge.

It is not necessary, in view of the concurrent conclusions arrived at by the trial court and by the learned Judges of the High Court, restate with any elaboration the details of the incident which culminated in the dacoity and murders. In addition to the corroborating pieces of evidence, there are eye-witnesses who have identified some or all the accused at the scene of crime, and it may also be stated that some of them had received injuries at the hands of the miscreants.

We have also a dying declaration, Exhibit P. 50, recorded by P. W. 20, a Magistrate, who also had recorded the statements of Ganga Saran (P. W. 2) and Ranbir (P. W. 18) when they were in a serious condition, anticipating that they might not survive the injuries but which they fortunately did.

The earliest information of the crime (Ex. P. 1) was given by Samey Singh (P. W. 1) at the Police Station Kithore at about 2 a. m. on March 1, 1954. It does not contain any details of the incident and is confined to the statement that a dacoity was being committed at the house of Atal Singh in the village and that the information had rushed from the village for making a report. That guns were being fired has also been recorded in it. P. W. 28 Dalbir Singh, who was Sub-Inspector of Police and the Station House Officer of Police Station Kithore at that time, received the information and reached the scene of dacoity at about 2-30 a. m., whereupon Jhamel Kaur (P. W. 4) handed over to him the list of the looted property (Ex. P. 2). According to this witness, he immediately examined P. W. 2 and other witnesses on the spot and recorded their statements. The injured persons were sent to

the hospital and inquests were held over the dead bodies of Rohtas Singh, Tejpal Singh, Atal Singh and Charan Singh in the presence of witnesses. Between 2-30 a. m. and 7 or 7-30 a. m., P. W. 28, according to him, did a considerable amount of work, such as recording the statements of all the available witnesses, sending the injured persons to the hospital after taking their statements, holding inquests over the dead bodies, inspecting the scene of dacoity, finding lead shots and wads there, and taking such things into custody, etc. By about 7 or 7-30 a. m. the Senior Superintendent of Police, the Deputy Superintendent of Police and other police officials reached the place of incident on hearing of the dacoity and by the time of their arrival, according to P. W. 28, he had finished the preliminary work. He also deposes that the purchase of the case diary for the period between March 1 and March 7, 1954, were sent all together to the Superintendent of Police only on March 7, and not as is enjoined by the rules every day as and when the day's recording is complete. We shall advert to the arguments of the learned counsel about this circumstance at a later stage.

The prosecution case depends, mainly if not solely, on the identification of the various accused persons by some or all of the prosecution witnesses, in addition to the dying declaration Exhibit P. 50 and the corroborating statements of P. W. 2, (vide Exhibit P. 49) and P. W. 18 (vide Exhibit P. 48).

We may here summarise in very short-outline the details of identification by the witnesses. P. W. 2 Ganga Saran identified accused Nos. 1, 3, 4, 5 and 7 (Kharak Singh, Harpal Singh, Niranjan Singh, Sardar Singh and Tikam Singh). Dharam Singh P. W. 3 identified accused No. 6 (Udaibir Singh) among the dacoits and also deposes that Atal Singh told him that accused No. 7 (Tikam Singh) had shot him with a gun. P. W. 4 Mst. Jhamel Kaur, in addition to giving a list of the looted property (Exhibit P. 2), identified accused Nos. 2 & 6 (Satpal Singh and Udaibir Singh). P. W. 5 (Richpal Singh) states that among the dacoits, there were accused Nos. 2, 4, 5, 6 and 7 (Satpal Singh, Niranjan Singh, Sardar Singh, Udaibir Singh and Tikam Singh). P. W. 7 (Om Pal) found among the dacoits accused Nos. 2, 6 and 7. The deposition of P. W. 9 is to the effect that he identified accused No. 6 (Udaibir Singh) and also that Atal Singh told him that accused No. 7 (Tikam Singh) had shot him. P. W. 10 Jagbir Singh identified, accused No. 1 (Kharak Singh). All the appellants before us were identified by P. W. 11 (Ganga Bal), and P. W. 18 (Ranbir) was able to identify accused No. 6 Udaibir Singh. The result of the above analysis is that each one of the accused has been identified by one or more of the prosecution witnesses. Accused No. 1 (Kharak Singh) is identified by P. W. 2, P. W. 10 and P. W. 11; accused No. 2 (Satpal Singh) is identified by P. W. 4, P. W. 5, P. W. 7 and P. W. 11; accused No. 3 (Harpal Singh) is identified by P. W. 2 and P. W. 11; accused No. 4 (Niranjan Singh) is identified by P. W. 2, P. W. 5 and P. W. 11; accused No. 5 (Sardar Singh) by P. W. 2, P. W. 5 and P. W. 11; accused No. 6 (Udaibir Singh) by P. W. 4, P. W. 5, P. W. 7, P. W. 9, P. W. 11 and P. W. 18; and accused No. 7 (Tikam Singh) is identified by P. W. 2, P. W. 5, P. W. 7, P. W. 9 and P. W. 11.

The learned Sessions Judge accepted the testimony of these witnesses and disbelieved the story put forward by the accused and in this he had the concurrence of the High Court. Such being the case, this court would not be justified in re-opening the finding about the guilt of the appellants if no question of law is involved, or if the conclusion is not perverse or opposed to principles of natural justice or revolting to judicial conscience. But Mr. Jai Gopal Sethi, counsel for the appellants, strenuously contended that in view of the failure of the Sub-Inspector P. W. 28 to comply with para. 109 of Ch. XI of the Uttar Pradesh Police Regulations, which lays down that when the investigation is closed for the day, a copy of the case diary for the day should be sent to the superior police officers, there has been an infraction of a mandatory rule of law which has resulted in prejudice and if that is so, the findings regarding the guilt of the accused should be re-opened and this court should

reassess and assay the evidence to find out how far the guilt of the appellants has been proved beyond reasonable doubt.

The question, therefore, is whether the action of the Sub-Inspector amounts to a violation of a statutory duty enjoined on him. If the Uttar Pradesh Police Regulations were a set of rules framed under any statute, and as such have the force of law, then a violation of any rule thereunder, may either amount to an illegality or an irregularity which may or may not vitiate the proceedings. The Police Act, 1861 was enacted to reorganize the police and to make it a more efficient instrument for the prevention and detection of crimes, whereby the State Government is given authority to appoint police officers, such as the Inspector-General, etc. Under s. 12 of that Act, the Inspector-General of Police may, from time to time, subject to the approval of the State Government, frame such rules and orders as he shall deem expedient relative to the organization, classification and distribution of the police force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties. It is not as if these police regulations are rules framed by the Inspector-General in accordance with section 12; but they are the result of the State Government laying down the mode of conduct and how the officers have to perform their duties. Rule 109 in Chapter XI dealing with the investigation of crimes enjoins upon the police officers when an investigation is closed for the day to note the time and place at which it closed and also lays down that throughout the investigation the diary must be sent daily to the Police Superintendent on all days on which any proceedings are taken. If the investigating officer is not himself in-charge of the station, the diary must be sent through the officer in-charge except when this will cause delay. It also directs the police officer to study carefully sections 162 and 173 of the Code of Criminal Procedure. Nowhere in the rules is it stated that there is any statutory authority for the framing of rule 109, nor is it said to form any addition to a statute, even though some other rules are expressly stated to be statutory ones. Such being the case, it is clear that rule 109 has no statutory foundation but is only an injunction by the executive Government to the police officers as to how they must regulate their work and conduct themselves during the course of investigation.

Mr. Jai Gopal Sethi, who appeared for the appellants in Criminal Appeal No. 60 of 1956, and Dr. Banerjee, who appeared for the appellant-accused No. 6, in Appeal No. 61 of 1956, put their case in this way : According to the police officer P. W. 28, he recorded the statements of all the eye-witnesses before day-break, and in case the diary under s. 172 containing the statements recorded under s. 162 had been sent to the superior police officers every day, then that fact would vouchsafe for the correctness of that document and it would not be possible for the officer to change or alter the statements of witnesses as it suited his desire if he wanted to do so at a later stage. In the present case since admittedly the case diary and the details of work during the course of seven days had not been sent to the superior police officers for a period of one week, it is suggested that it is possible that it might be considered a false document because it was not prepared then and there containing statements recorded as and when they were made. In that case, both the learned counsel contend that the opportunity of cross-examining the witnesses and finding out whether the names of the accused were given at the earliest point of time has been lost to the defence. The result of this, according to the learned counsel, has caused irreparable prejudice which cannot be condoned or regularised.

But the learned counsel have not been able to show to us that para. 109 of Ch. XI of the Police Regulations has the force of law. In this connection reference may be made to Ch. XLV of the Code

of Criminal Procedure dealing with illegal and irregular proceedings and to s. 529 laying down irregularities which do not vitiate proceedings, while s. 530 concerns irregularities which vitiate proceedings. Section 537 is to the effect that subject to the provisions contained in the previous sections of that Chapter no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Ch. XXVII or on appeal or revision on account of among other things any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under the Code. There is an Explanation added that "in determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings". It is true that the objection was taken before the learned Sessions Judge and, therefore, the Explanation cannot be applied. In these circumstances and on the footing that the Uttar Pradesh Police Regulations, are merely directions regarding the course of conduct, can it be stated that a breach of it would vitiate the trial ? The Code of Criminal Procedure in laying down the omissions or irregularities which either vitiate the proceedings or not does not anywhere specifically say that a mistake committed by a police officer during the course of the investigation can be said to be an illegality or irregularity. Investigation is certainly not an inquiry or trial before the court and the fact that there is no specific provision either way in Ch. XLV with respect to omissions or mistakes committed during the course of investigation except with regard to the holding of an inquest is, in our opinion, a sufficient indication that the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial.

The learned counsel for the State of Uttar Pradesh invited our attention to a few cases which show that even violation of the provisions of the Code would not amount to an illegality.

The decisions of their Lordships of the Judicial Committee reported in Pulukuri Kotayya and Others v. King-Emperor (1) and Zahiruddin v. King-Emperor [[1947] L. R. 74 I. A. 80.] lay down that a breach of sections 162 and 172 of the Code does not amount to an illegality. If therefore such an omission could not vitiate a trial, it is all the more reasonable that a failure to conform to a rule of conduct prescribed by the State Government on police officers cannot in any way interfere with the legality of a trial. That failure to investigate an offence does not necessarily prejudice an accused and therefore any mistake or omission in conducting investigation cannot vitiate a trial has been laid down in Hafiz Mohammad Sani and Others v. Emperor [A. I. R. 1931 Pat. 150.]. At p. 152, Adami J. observes as follows :-

> "There can be no doubt that the Sub-Inspector in his procedure disobeyed certain provisions of the law, and for that he could be punished, if the authorities deemed it fit, but I cannot find that his failure was to the prejudice of the petitioners. Nor can I see how failure properly to conduct an investigation into an offence can vitiate a trial which was started on the final report after the investigation".

We are in agreement with these observations.

In a recent case reported in Tilkeshwar Singh and Others v. The State of Bihar [[1955] 2 S. C. R. 1043, 1047, 1048.], Venkatarama Ayyar J. expressed the opinion that "while the failure to comply with the requirements of section 161(3) might affect the weight to be attached to the evidence of the witnesses, it does not render it inadmissible". He referred to the case of Bejoy Chand v. The State [A. I. R. 1950 Cal. 363.] and agreed with the observations of the Calcutta High Court therein. We

have no hesitation in following those observations. Our attention was also drawn to the case of Gajanand and Others v. State of Uttar Pradesh [A. I. R. 1954 S. C. 695, 699.], which contains statements of law helpful for the decision of this case.

We are not prepared to say that because P. W. 28 did not send copies of his diary to the superior officers every day, the same should be considered as a suspicious document unworthy of credit. The learned Judges of the High Court and the court of first instance have cast no doubt upon the genuineness of the case diary and that being the case, it is not open to us without any compelling reasons to say that it is spurious or suspicious. In the circumstances, we do not feel justified in holding that the omission of P. W. 28 is a violation of the provisions of a statute or a rule having the force of law which renders the trial invalid.

Holding therefore the point on which the special leave had been granted, against the appellants, we order that the appeals be dismissed.

Appeals dismissed.

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