SUPREME COURT OF INDIA

Mulk Raj

Vs.

State of U.P.

(S. J. Imam, A. K. Sarkar and K. Subba Rao, JJ.)

20.02.1959

JUDGEMENT

SUBBA RAO J.:

1. This is an appeal by special leave against the judgment of a Divisional Bench of the High Court of Judicature at Allahabad convicting the appellant under Ss. 302 and 394 of the Indian Penal Code and sentencing him to death and ten years' rigorous imprisonment respectively. Shortly stated, the prosecution case is as follows:

2. Amar Lal, the deceased, Kishan Lal (P. W. 1) and Dewan Chand (P. W. 2) were the sons of one Mohri Ram. They were living in a house in a locality known as "Chhatta Baroomal" in the city of Saharanpur. At the entrance of the house there is "deorhi'. The door of the "dahliz" of the house of Kishan Lal and the doors of three other houses open into this "deorhi." In the house the brothers lived in different portions. The deceased and Dewan Chand lived on the ground floor while Kishan Lal lived on the first floor known as "chaubarah". There is an open roof over the "deorhi' lying in front of the "chaubarah" and it projects over the gate of "'deorhi". Kishan Lal, Amarlal and Mohri Ram were doing business in 'biris' and cigarettes and their shop was two or three furlongs from their house. On 15-8-1957, Kishan Lal returned from his shop at about 11 p. m. and went up to sleep on the "chaubarah" after chaining the door of his "dahliz". Amarlal, after writing the accounts for the day, came there after some time and knocked at the door of the "dahliz". Kishan Lal came down to open the door and, before doing so, he heard the shout of Amarlal not to do so, as a man with a pistol was standing there, Kishan Lal as also his brother, Dewan Chand, peeping through slits in the door saw three persons, namely Mulkraj, the appellant, with a dagger, Amarath, another accused, with a pistol, and Milkiraj with a knife in his hand, surrounding Amarlal in the "deorhi' and demanding money from him. Both the brothers then went upstairs to their "chhajja" from where they raised an alarm. They also saw the aforesaid three persons grappling with Amarlal and taking him out of the "deorhi' to the open pavement outside, and Mulkraj, the appellant, stabbing Amarlal in the stomach with the dagger and the two accused, Amarnath and Milkiraj; snatching away the money out of his pocket and the gold ring from his finger. The two brothers and a neighbour, one Janendra Das, as also Amrit Lal, who were sleeping on their "chhajjas" and woke up on hearing the cries of Amarlal, came down from their respective houses and saw the accused run away towards the "chhatta Baroomal". Kishan Lal, Janendra Das and Amrit Lal chased them raising alarm. Sunder Lal (P. W. 3),and Rajindra Kumar P. W. 8) also joined them in their pursuit. After going through some lanes, the three accused reached a well wherefrom Milkiraj and Amarnath turned to the left and escaped, and Mulkraj ran straight into a blind lane and was caught by Mohammad Inam (P. W. 5) Ghulam Mohammad (P. W. 7) and others. When questioned by Kishan Lal, Mulkraj stated that Milkiraj and Amarnath brought him there and asked him to stab Amarlal and that he had thrown the

dagger in the 'nali' near the place of the occurrence. The appellant was brought to the scene of occurrence and the 'chaddar', Exhibit 2, was found lying in front of the house of Rajindra Kumar (P. W. 8) and the dagger, Exhibit 1, was found in the 'nali'. Kishan Lal took Mulkraj along with the 'chaddar' and the dagger, and handed him over to the police and at about 12-30 in the night he lodged the First Information Report. Amarlal was taken by Dewan Chand to their family doctor, Dr. Ram Prasad, and both of them took him to the District Hospital. The medical officer examined Amarlal and declared him to be dead.

3. The First Information Report which was lodged by Kishan Lal an hour after the incident gives in detail the entire incident; it gives the names of the accused, the names of the persons who saw the actual killing, the names of the persons who chased the accused, the names of those who caught hold of the appellant and other relevant particulars. Before the learned Sessions Judge, the prosecution sought to establish its case by examining as many as sixteen witnesses. The learned Sessions Judge accepted the entire evidence of the witnesses, except their evidence in regard to the extra judicial confession made by Mulkraj, and found Mulkraj guilty under Ss. 302 and 394, Amarnath under S. 302 read with S. 34 and under S.394, and Milkiraj under Section 302 read with S. 34 and under S. 394 of the Indian Penal Code and sentenced them to death and to undergo rigorous imprisonment for ten years under the said sections. One Girdhari Lal who was also charged along with the aforesaid accused for abetting them, was acquitted. The three convicted accused preferred two appeals to the High Court. The learned Sessions Judge also made a reference to the High Court for the confirmation of the death sentences passed by him on the three accused. The said two appeals and the reference were heard together by a Divisional Bench of the Allahabad High Court. The High Court disbelieved the version of the witnesses in regard to that part of the prosecution case relating to the actual killing and robbing of the deceased and acquitted Amarnath and Milkiraj. It accepted the evidence of P. Ws. 1, 5 and 7 - learned Counsel for the appellant in the High Court did not challenge the testimony of the said witnesses in regard to the chase and arrest of Mulkraj - and, after rejecting the plea of Shri S. N. Mulla for a lesser sentence, confirmed the conviction made and the sentence passed by the learned Sessions Judge in regard to the appellant herein. Before us the learned Counsel for Mulkraj argued that the learned Judges went wrong in relying upon the evidence of witnesses who were disbelieved in regard to the actual killing and robbing of the deceased and that in any event the evidence of the said witnesses does not bring home the guilt to the appellant.

4. The learned Advocate for the appellant strongly urged that we should examine the evidence for ourselves in the circumstances of the present case. Ordinarily, this Court will not go behind the findings of fact of the Courts below. In the present case, we can find no valid ground for departing from the practice of the Court.

5. On a careful reading of the judgments of the High Court and the Additional Sessions Judge we are not satisfied that the High Court gave convincing reasons for disbelieving the prosecution witnesses who spoke to having seen the deceased being assaulted and robbed. The grounds given by the Additional Sessions Judge for believing them, appear to us to be sound. We shall, however, proceed to deal with this appeal on the findings of the High Court. The High Court believed the witnesses when they stated that they had chased the culprits, including the appellant, immediately after the deceased had been assaulted and robbed. Neither this evidence nor the evidence concerning the manner in which the appellant was arrested was challenged by the appellant's advocate in the High Court. It is established therefore that the appellant along with others was seen running away from a spot near the place where the deceased had been assaulted immediately after the alarm had been raised. Having regard to the time and place of the occurrence, the appellant had no valid reason

for being there. His explanation that he was drunk and had knocked against a cot and had been arrested was rightly rejected by the, Courts below. There was evidence in the case that he was not drunk at the time of his arrest. This explanation was given by the appellant when he was examined under S. 342 of the Criminal Procedure Code by the Additional Sessions Judge. He made no such statement before the Committing Magistrate when examined by that Court under S. 342 of the Criminal Procedure Code. On the contrary, he denied that he had been arrested at the spot. There is, therefore, no acceptable. explanation for the appellant's presence at the place near the scene of the murder at a time when he would not normally be expected to be there.

6. According to the prosecution, while the appellant was seen running away be threw the dagger, Exhibit 1, into the 'nali'. This fact was stated by Kishan Lal in the First Information Report lodged soon after the occurrence. The evidence of Janendra Das, P. W. 6, is to that effect. No doubt Janendra Das along with Kishan Lal, P. W. 1, and Dewan Chand, P. W. 2, has been disbelieved regarding their having witnessed the killing and robbing of the deceased. The High Court judgment is silent on the point whether it believed this witness as to the rest of his story. He was fully believed by the Additional Sessions Judge and we can see no reason why his evidence should not be accepted like that of the other witnesses about events after the assault on the deceased. He deposed, like the other witnesses, about the share of the appellant in the crime. His evidence that he saw the appellant throw the dagger, Exhibit 1, in the 'nali' is amply corroborated by the recovery of that weapon from the same 'nali' after the apprehension of the appellant. The evidence also proves that, on recovery, the dagger was found to be stained with blood. This dagger, Exhibit 1, was found by the Chemical Examiner to be stained with blood. It is true that owing to the blood having disintegrated its origin could not be determined. The evidence therefore established that the appellant threw into the 'nali' a blood-stained dagger while he was running away from near the scene of the murder.

7. The deceased had only one injury on the abdomen which caused his death. The doctor's evidence is that the injury was sufficient in the ordinary course of nature to cause death and that the dagger, Exhibit 1, could have caused the fatal injury. Evidently no other weapon except the dagger had been used against the deceased because in that event one would expect the deceased to have had more than the one injury found on his person. This would suggest that the dagger, Exhibit 1, which was found to be stained with blood immediately after the assault, was used with deadly effect.

8. When the appellant was arrested after the chase he was found to be wearing a shirt stained with blood. The Chemical Examiner found it to be stained with blood but owing to disintegration its origin could not be determined. The explanation offered by the appellant in the Court of Sessions was that he had been beaten after his arrest. One of the prosecution witnesses does admit that the appellant was beaten by some one at the time he was caught but denied that he suffered any injury or that he had bled as the result of it. This explanation given to the Additional Sessions Judge was not given before the Committing Magistrate. He did not assert before the Committing Magistrate that he had been beaten by any one. No question was put to the police officer, before whom the appellant was brought under arrest, concerning any injury found on the person of the appellant. If the appellant had been at all injured so as to have bleeding injury, it is significant that no attempt was made on his behalf to ascertain from the police officer as to whether he had found any such injury on him. There is no evidence that the appellant complained of any injury on him in which case he was bound to have been examined by a doctor. There is no evidence that any doctor examined him to ascertain the nature of his injury, if any. We are satisfied, therefore, that even if the appellant had been beaten by some one after his arrest, no injury was caused to him which would have caused blood to stain his shirt. It is significant that the appellant denied before the Additional Sessions Judge that Exhibit 3, the shirt, which was found on his person, was ever taken possession

of from him. According to the appellant, the shirt which he was wearing at the time, of his arrest was not taken from him and he was sent to jail wearing that very shirt. Before the Committing Magistrate also he denied that the shirt, Exhibit 3, belonged to him. It is clear, therefore, that the appellant had been deliberately denying the ownership of the shirt or that it was taken from, his person at the police station, because it was stained with blood and to admit the ownership of such a shirt might be a circumstance incriminating him. The very denial would suggest that such assault as may have taken place on him, did not cause any bleeding injury. Otherwise, there should have been no difficulty on the part of the appellant in admitting that the shirt Exhibit 3, belonged to him and that the blood-stains on it were the result of the injury suffered by him when be was assaulted. In our opinion, the circumstance that the appellant was wearing a blood-stained shirt so soon after the murder is another circumstance unfavourable to the appellant.

9. In our opinion, the circumstances mentioned above establish that the appellant inflicted the fatal injury on the deceased and that the act of the appellant amounted to the offence of murder. The cumulative effect of the circumstances already narrated leaves no room for any reasonable doubt that the appellant was guilty of murder of the deceased.

10. No doubt the Additional Sessions Judge did not accept the evidence to the effect that the appellant had made an extra- ' judicial confession. The High Court, however, does not seem to have disbelieved the witnesses on this point. When dealing with the case of the acquitted accused, Amarlal and Milkiraj, the High Court considered in detail the extra-judicial confession. In one part of the judgment the learned Judges thought that the confession of the appellant was consistent with the absence of the acquitted accused from the scene of the crime. In another part of the judgment, however, the High Court was of the opinion that the names of the two acquitted accused were mentioned by the appellant and the witnesses felt morally certain that the acquitted accused were there and that the moral conviction eventually ripened into factual certainty. Finally, the High Court found that the appellant did actually use his weapon with deadly effect. It would have been better if the learned Judges of the High Court had given a clear finding that they believed the evidence of the witnesses to the effect that the appellant had confessed that he had stabbed the deceased. The judgment of the High Court seems to indicate that the learned Judges were prepared to believe that the appellant had confessed his crime after he had been apprehended. There is certainly no finding that they rejected the evidence to that effect. There are good reasons for believing that the appellant had made a statement to the effect that he had stabbed the deceased. The First Information Report was lodged without undue delay. The appellant and the two acquitted accused were definitely named as the persons who were responsible for the death of the deceased and that the appellant was the one who had stabbed him. There appears to have been no motive for the witnesses to have accused the appellant and the acquitted accused for the murder of the deceased. Therefore, either the witnesses had seen the three accused commit the crime and, therefore, they were named in the First Information, or the names of the two acquitted accused, who were known to the witnesses from before, had been given out by the appellant. On the finding of the High Court that none of the witnesses had actually seen the deceased being stabbed or robbed, the inference would be that their names were given out by the appellant when he was apprehended. This would lend support to the evidence of the witnesses that the appellant had confessed to them that he had stabbed the deceased. "The Additional Sessions Judge seemed to mention about the extra-judicial confession in the First Information Report. The witnesses did speak of it in the Court of the Committing Magistrate and there is nothing to suggest that it was only at that stage and not earlier that the witnesses for the first time spoke of the appellant having made a confession. There is, therefore, good reason for accepting the evidence of the witnesses that the appellant had made a confessional statement to them to the effect that he had stabbed the deceased. There may be some confusion in the mind of the witnesses

as to the actual words used by the appellant but there seems to be no confusion in their mind with reference to the statement that he had admitted that he had stabbed the deceased.

11. We must notice another argument of the learned Advocate at this stage. It is said that the exact words used by the appellant when he made the extra-judicial confession were not given and that therefore the confession should be excluded. P. Ws. 1, 5, 6 and 7 repeated before the learned Additional Sessions Judge what the appellant stated before them and there is no appreciable difference in the gist of the confession made by the accused. Every one of them stated that the accused had stated that he stabbed the deceased because Amarnath and Milkiraj brought him there to do so. An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. If the rule is inflexible that the Courts should insist only on the exact words, more often as not, this kind of evidence, sometimes most reliable and, useful, will have to be excluded; for, except perhaps in the case of a person of good memory, many witnesses cannot repeat the exact words of the accused. It is for the Court having regard to the credibility of the witness, his capacity to understand the language in which the accused made the confession, to accept the evidence or not. In this case, the confession made by the appellant was not a complicated one and the witnesses stated without any confict practically the exact words used by the appellant and also how they understood the words. In the circumstances, if the evidence of the witnesses is acceptable, there is no reason why the extra-judicial confession made by the accused could not be acted upon.

12. The circumstantial evidence and the extra-judicial confession made by the appellant leave no room for doubt that the appellant had stabbed the deceased. He was, therefore, rightly convicted under S. 302 of the Indian Penal Code for murder. Having regard to the nature of the crime, it is impossible judicially to say that the sentence of death passed on the appellant was not the proper sentence. The appeal is, accordingly, dismissed.

Appeal dismissed.

</html