SUPREME COURT OF INDIA

Charan Singh

Vs.

State of U.P.

Crl.A.No.17 of 1959

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

14.05.1959

JUDGEMENT

S. K. DAS, J.:

1. The learned Sessions Judge of Mathura convicted Charan Singh appellant herein, of killing Sarjiti, a girl aged 10 or 12, in her house in village Anta-ki-Garhi, police station Sadabad, in the district of Mathura, on November 20, 1957 in the morning, and sentenced him to death. There was another charge under S. 380, Indian Penal Code, against the appellant for committing theft of certain ornaments, but of this charge the learned Sessions Judge acquitted him. There was the usual reference to the High Court of Allahabad for confirmation of the sentence. The appellant also filed an appeal. These two were heard together and by its judgment dated July 29, 1958 the High Court dismissed the appeal, accepted the reference and affirmed the conviction and sentence. From this judgment the appellant moved by way of special leave and on December 15, 1958 this Court granted special leave to the appellant. The present appeal has been filed in pursuance of such leave.

2. Sarjiti was the daughter of one Atar Singh by his first wife. Atar Singh lived in village Anta-ki-Garhi, police station Sadabad. After the death of his first wife, he married Ram Siri, sister of his first wife. Atar Singh has two children by his second wife, one of the children being three years old and the other one year old only. The appellant is a resident of the same village and lived close to Atar Singh. The prosecution case was that the appellant was employed by Atar Singh for some time, when the latter was carrying on the business of manufacturing "ghungras" (small bell-like jingling, trinkets worn round the ankles), Atar Singh, however, discontinued that business and the appellant lost his employment. The prosecution case further was that a day before the murder of Sarjiti, the appellant went to the house of Atar Singh in the 1atter's absence and cut jokes with Ramsiri :this was resented by Ramsiri as well as Sarjiti, and both of them said that they would complain to Atar Singh about the appellant's conduct. On this it was said that the appellant threatened Sarjiti that she would be killed if she made a complaint of his conduct to her father. When Atar Singh came back, a complaint was made. Atar Singh went to the house of the appellant and enquired about his conduct. The latter, however, denied having been guilty of any improper conduct and nothing further happened that day. On November 20, 1957 Atar Singh went to his fields early in the morning and Ram Siri with her two small children went out of the house for preparing cow-dung cakes. Sarjiti was left alone in the house. At about 8 or 9 a. m. on that day, the prosecution case stated, the appellant went into the house of Atar Singh. He was then wearing a dhoti and a shirt and carried something under his arm covered in a piece of cloth. Soon after he was seen coming out of the house, and at that time he was wearing a dhoti and a vest only but no shirt. Ram Siri came back at

about 9 or 9-30 a.m. and shouted for Sarjiti. Getting no response she went to the house of one Chandan Singh, brother of her husband, and told Chandan's wife that Sarjiti had gone away and she was going to look for her in the village. Atar Singh himself and his brother came back to the house at about 11-30 a. m. Atar Singh saw that a box was lying open in one of the rooms from which he found some ornaments missing. Their was some 'bhoosa' (husk of grain) in one of the rooms and near the 'bhoosa' were blood stains. On removing the 'bhoosa' Atar Singh discovered the dead body of his child Sarjiti. Near the dead body was also found the shirt which, it was stated, belonged to the appellant and which the appellant was seen wearing when he entered into the house of Atar Singh earlier in the day. A 'gandasa' (a chopper for cutting fodder) was also found near the dead body. Both the shirt and the chopper were stained with human blood and the chopper was also said to belong to the appellant. On an alarm raised by Atar Singh, many other villagers came, and some of them also identified the shirt and the chopper. Some also said, and they were later examined as prosecution witnesses, that they had seen the appellant enter the house of Atar Singh earlier in the morning and also going out of it in the manner stated earlier. Atar Singh went to the police station at about 3-30 p. m. when he made his first information, the police station being at a distance of six miles from the village. The investigating police officer came to the village and recovered the blood-stained shirt and chopper. These were later sent to the Chemical Examiner and the Serologist and were found to be stained with human blood. The post mortem examination revealed that Sarjiti had been literally hacked to death. There were eight incised wounds, some of which had cut the occipital. temporal and parietal bones, the vault of the head was open and the brain matter was coming out. There were about six ounces of 'dalia' in her stomach, which was consistent with death having taken place soon after morning breakfast.

3. The defence of the appellant was that he had been falsely implicated out of enmity. It was suggested on his behalf that Mukhia, one of the prosecution witnesses, had illicit connection with Ram Siri: Sarjiti objected to such illicit connection and it was suggested that Mukhia and Ram Siri might have killed Sarjiti and then attempted to foist the murder on the appellant. This was one line of defence. The other line of defence was that there was a quarrel between Atar Singh and some of the villagers on one side and the appellant on the other over the tethering of bullocks in front of the appellant's house. Some of the villagers gave slaps to the appellant and in the evening Puran, a nephew of Mukhia, told the appellant that he was called by Puran's grand-father The appellant refused to go, but seeing some constables sitting at the house of Mukhia, the appellant left the village and went to Mathura on a cycle and on November 20, 1957 he was in Mathura where he filed a petition in the box kept for that purpose in the house of the Superintendent of Police and also filed a complaint before the Sub-divisional Magistrate. On behalf of the appellant one Bhagwan Singh (defence witness No. 1) was examined and this witness said that he wrote the petition which was put in the box of the Superintendent of Police. The petition which was marked as an exhibit was dated November 20, 1957, but an endorsement thereon showed that it was found in the box on November 22, 1957. The appellant suggested that when he came to know of the case against him, he surrendered on November 23, 1957. The appellant denied that he had entered into the house of Atar Singh on November 20, 1957 or that he had killed Sarjiti or that the blood-stained shirt and chopper belonged to him.

4. It is clear from what has been stated above that the case against the appellant rested entirely on circumstantial evidence and no eye-witness came forward to say that he had seen the appellant kill the child Sarjiti. Both the learned Sessions Judge and the High Court disbelieved the defence and accepted the circumstantial evidence alleged on behalf of the prosecution as correct and sufficient to establish the appellant's guilt. The question for our consideration is if the courts below are right in their view that the circumstantial evidence in the case is sufficient to establish the guilt of the

appellant. Learned counsel for the appellant has contended before us that even if the circumstantial evidence said to have been proved against the appellant is accepted as correct, it does not reasonably exclude the hypothesis that some person other than the appellant, namely, the thief who stole the ornaments, might have killed Sarjiti. This is one part of the argument of learned counsel for the appellant. The other argument of learned counsel is that the evidence which the prosecution led to prove that the appellant entered into the house of Sarjiti and came out soon after in the morning of November 20, 1957 and that the bloodstained shirt and chopper found near the dead body belonged to the appellant was unreliable and if these links in the chain of circumstances alleged against the appellant are missing, then the prosecution case against him must fail. These are the two main arguments which we have to consider in this appeal.

5. It is well established that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and the circumstances so established should be consistent only with the hypothesis of the guilt of the accused person, that is, the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved. To put it in other words the chain of evidence must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused person see Hanumant v. State of Madhya Pradesh, 1952 SCR 1091 (AIR 1952 SC 343); and Deonandan Mishra v. State of Bih ar, (1955) 2 SCR 570: (AIR 1955 SC 801). In 1952 SCR 1091:(AIR 1952 SC 343), this Court referred further to the danger in such cases that conjecture or suspicion may take the place of legal proof and 'the mind is apt to take a pleasure in adapting circumstances to one another, and even in straining them a little if need be, to force them to form part of one connected whole, see the observations in Reg. v. Hodge, (1838) 2 Lewin 227. It is against the practice of this Court in an appeal by special leave to embark on an assessment of the evidence when two courts have already assessed it and come to concurrent conclusions therefrom. In view of the danger referred to above, we allowed learned counsel for the appellant to make his comments on that part of the evidence of the prosecution witnesses which bears upon the question whether the circumstances alleged against the appellant have been fully established. (After discussing the evidence His Lordship concluded): In our view, the circumstances alleged against the appellant have been fully established and there is no doubt about them.

6-9. The High Court has summarised the circumstances proved against the appellant. Firstly, the appellant was seen entering the house of Atar Singh at about 8 or 8-30 a. m. On November 20, 1957, the morning on which the murder was committed; (2) when he entered the house he was wearing the shirt, Ext. 2, but when he came out, he bad a vest on and no shirt, (3) the shirt, Ex. 2, stained with human blood was found near the dead body of Sarjiti; (4) when the appellant entered the house of Atar Singh, he had carried something under his arm wrapped in a piece of cloth, but when he came out he had nothing in his hand or under his arm and later on a blood-stained chopper belonging to the appellant was found near the dead body, and (5) both the shirt and chopper were stained with human blood. The question now is whether the aforesaid circumstances, fully established as they are, fulfil the well recognised tests as to sufficiency of circumstantial evidence to which we have earlier referred. Are they consistent only with the hypothesis of the guilt of the appellant and is the chain so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the appellant ? In our view, the circumstantial evidence in this case fulfils the necessary tests. Learned counsel for the appellant has drawn our attention to the fact that the appellant has been acquitted of the charge of theft and learned counsel has suggested that the thief, whoever he might have been, might have committed the murder of Sarjiti. We are unable to regard this suggestion as worthy of acceptance. The learned Sessions Judge did not acquit the appellant of the charge of theft on the ground that some other person had committed the theft of

ornaments. He acquitted the appellant of the charge of theft, because the circumstantial evidence on which he relied did not, in his opinion prove the charge of theft, though it did establish the charge of murder. Unless there is something in the record to indicate hat the murder and the theft were committed at two different times, we do not think that the acquittal of the appellant on the charge of theft raises any doubt as to the correctness of his conviction for the offence of murder. The hypothesis that a stranger or a thief other than the appellant had committed the murder is completely inconsistent with the finding of the bloodstained shirt and chopper belonging to the appellant near the dead body.

10. Learned counsel for the appellant has not asked us to accept the defence suggestion that the appellant was away at Mathura on November 20, 1957. The evidence of the witness examined on behalf of the appellant was considered both by the learned Sessions Judge and the High Court And the High Court rightly pointed out that the Petition said to have been filed by the appellant in the box of the Superintendent of Police, Mathura, was. found on November 22, 1957, though the date mentioned in the petition was November 20, 1957. It is obvious that that petition did not establish the plea of alibi which the appellant appears to have raised in the Courts below.

11. For the reasons given above, we see no good grounds for interference either with the conviction or the sentence of the appellant. The murder was a cold-blooded murder of a defenceless child and there are no mitigating circumstances. The result, therefore, is that the appeal fails and is dismissed.

Appeal dismissed.

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