Tori Singh

Vs

The State of Uttar Pradesh

Criminal Appeal No. 38 of 1961

(K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

12.09.1961

JUDGMENT

WANCHOO, J. –

This is an appeal by special leave against the judgment of the Allahabad High Court. The appellants are father and son and live in village Patrasi. The deceased Sohanlal also lived in the same village. He is said to have been murdered on the morning of December 2, 1959, after sun-rise. About two years before the incident one Sunder had filed a criminal case against the deceased. In that case the present appellants had helped Sunder against the deceased. The deceased was acquitted. One Chetram was a witness for the deceased in that case. Later on, Tori Singh appellant attacked Chetram with a spear and Chetram made a report in that connection against Tori Singh. Sohanlal was helping him in that matter, and in consequence there was enmity between Tori Singh and his father Budhi Singh, appellants, and the deceased.

It is said that on the morning of December 2, 1959, the deceased was going to the fields outside the village in order to ease himself. He passed by a platform which is on a cross-road in the village. The appellants were sitting on the platform, Tori Singh carrying a pistol with him. As the deceased passed by the platform, Budhi Singh instigated Tori Singh to shoot him down. Thereupon Tori Singh shot at Sohanlal who was hit in the lumbar region. Sohanlal then ran towards his house while the two appellants fled away. Sohanlal was thereafter taken to the police station where he made a report against the appellants. He also made a statement before the investigating officer and his dying declaration was recorded by a magistrate. Sohanlal died on December 3, 1959. The appellants had absconded during investigation. They were prosecuted after their arrest.

The appellants did not dispute that there was bad blood between them and the deceased; but their case was that they were not responsible for this murder and had nothing to do with it.

The main evidence against the appellants consisted of the statements of four witnesses, namely, Babunath, Chhannu, Itwari and Khamani, and the dying declarations made by the deceased before his death. The Additional Sessions Judge who tried the case relied on the evidence of Babunath, Itwari and Khamani and on the dying declarations; he did not, however, place reliance on the statement of Chhannu. He found the two appellants guilty under section 302 read with section 34 of the Indian Penal Code and sentenced Tori Singh to death as he was the man who had shot at Sohanlal and Budhi Singh to imprisonment for life.

There were two appeals to the High Court by the two appellants and the learned Judge also made a reference for confirmation of the sentence of death. A suggestion was made during the course of

trial that one Chhiddu was responsible for the murder, particularly as he was said to have made a confession. Chhiddu was, however, not examined by the trial court. The High Court, therefore, in the interest of justice, examined Chhiddu and took his statement into consideration along with the prosecution evidence in order to judge the guilt of the appellants. The High Court agreed with the trial court in its conclusion that Babunath, Khamani and Itwari were credible witnesses and reliance could be placed on the dying declarations made by the deceased. It further accepted the evidence of Chhannu which had not been relied upon by the trial court. It considered the evidence of Chhiddu and was of opinion that that evidence was false. It therefore dismissed the appeals and confirmed the sentence of death passed on Tori Singh after making slight modification in the sections under which the convictions were recorded. The application of the appellants for leave to appeal having been dismissed, they obtained special leave from this Court; and that is how that matter has come up before us.

The main point urged on behalf of the appellants before us is that if one looks at the sketch map Ex. Ka-9 on which the place where the deceased is said to have been it is marked and compares it with the statements of the prosecution witnesses and the medical evidence, it would be extremely improbable for the injury which was received by the deceased to have been caused on that part of the body where it has been actually caused, if the deceased was at the place marked on the map. It was also been urged that according to the medical evidence, the wound of exit was at a higher level than the wound of entry showing that the bullet hit obliquely and that it was extremely improbable that the bullet should have passed from down below upwards through the body, considering that Tori Singh was on a platform and thus at a higher level than the deceased.

We are of opinion that neither of these arguments has any force. Let us first take the contention that it was most unlikely that deceased would be hit on that part of the body where the injury was actually received by him, if he was at the spot marked in Ex. Ka-9. The validity of this argument depends mainly on the spot which has been marked on the sketch-map Ex. Ka-9 as the place where the deceased received his injuries. In the first place, the map itself is not to scale but is merely a rough sketch and therefore one cannot postulate that the spot marked on the map is in exact relation to the platform. In the second place, the mark on the sketch-map was put by the Sub-Inspector who was obviously not an eye-witness to the incident. He could only have put it there after taking the statements of the eye witnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of section 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of section 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation. We may in this connection refer to Bhagirathi Chowdhury v. King Emperor, (A. I. R. 1926 Cal. 550), where it was observed that placing of maps before the jury containing statements of witnesses or of information received by the investigation officer preparing the map from other persons was improper, and that the investigating officer who made a map in a criminal case ought not to put anything more than what he had seen himself. The same view was expressed by the Calcutta High Court again in Ibra Akanda v. Emperor (A. I. R. 1944 Cal. 339), where it was held that any information derived from witnesses during police investigation, and recorded in the index to a map must be proved by the witnesses concerned and not by the investigation officer, and that if such information is sought to be proved by the evidence of the investigating officer, it would

manifestly offend against section 162 of the Code of Criminal Procedure.

This Court had occasion to consider the admissibility of a plan drawn to scale by a draftsman in which after ascertaining from the witnesses where exactly the assailants and the victims stood at the time of the commission of offence the draftsman put down the places in the map, in Santa Singh v. The State of Punjab (A. I. R. 1956 S. C. 526). It was held that such a plan drawn to scale was admissible if the witnesses corroborated the statement of the draftsman that they showed him the places and would not be hit be section 162 of the Code of Criminal Procedure. In that case there was another sketch prepared by the Sub-Inspector which was ruled out as inadmissible under section 162. The sketch-map in the present case has been prepared by the Sub-Inspector and the place where the deceased was hit and also the places where the witnesses were at the time of the incident were obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to the Sub-Inspector are inadmissible under section 162 of the Code of Criminal Procedure and cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map.

We have however still to examine the argument on behalf of the appellants that it was extremely unlikely that the deceased would have been hit on that part of the body, leaving out of account the sketch-map and spots marked on it by the Sub-Inspector. The argument is that the evidence of the witnesses was that the deceased was facing or going towards east when he was hit and therefore it was most unlikely that he would be hit on the left side of the lumbar region where he was actually hit. There is no doubt that if the deceased was towards the west or north-west of the platform when he was hit, the chances of his being hit on the left side of the lumbar region would be very slight; but if he was to the east or north-east of the platform it would only be a matter of chance if he was hit on the left side of the lumbar region or on the right side, and the argument would lose all force if he was slightly toward the east or north-east of the platform. Let us therefore look at the evidence of the witnesses in this connection. Babunath stated that the deceased was at a distance of 5 or 6 paces from the platform towards the east and was facing towards the east while the appellants were towards the west of Sohanlal. If that is so it is only a matter of chance whether the deceased would be hit on the left side of the lumbar region or the right side. Chhannu stated that the deceased had passed the platform and had gone 5 and 6 paces beyond when he was shot and that he was towards the east at the time. The sketch-map shows that there was a pond towards the east and the deceased was obviously going towards that pond. The evidence of Chhannu therefore shows that the deceased was in all probability towards north-east of the platform when the shot was fired and if so he could have been hit on either side of the lumbar region. Itwari stated that the deceased was going by the platform and was hit when he had gone some distance beyond the platform. He did not say which way the deceased was going, whether north or east. His evidence therefore cannot be used to show that the deceased could not have been struck on the left side of the lumbar region. Khamani stated that the deceased had gone 5 and 6 paces beyond the platform and was towards the east of the assailant. If that is so there would be nothing improbable if the shot hit towards the left side of the lumbar region. There is nothing therefore in the evidence of the witnesses which would show that it was next to impossible for the shot fired from the platform to have hit the deceased on the left side of the lumbar region. The whole argument on this aspect of the matter therefore based as it was on the spot marked on the map must fail, for the evidence of the witnesses which we have noticed above, does not show that the position of the deceased was such that he could not have been hit on the left side of the lumbar region.

The other contention in this connection is that that the medical evidence shows that the wound of

exit was higher than the wound of entry, and this means that the bullet must have travelled from down below upwards. The witnesses are not quite consistent as to whether the shot was fired by Tori Singh while he was sitting on the platform or while he stood on the platform or after he got down from the platform. The High Court has accepted that the shot was fired while Tori Singh was sitting on the platform and therefore according to the High Court the chances were that the bullet would travel upwards through the body. But apart from this, the medical evidence is not that the bullet travelled in a straightline through the body. If the medical evidence had been that the bullet travelled in a straightline through the body from the wound of entry to the wound of exit, it might have been said that the course of the bullet was from down below upwards. However, the evidence of the doctor is that the movement of the bullet through the body was very zigzag. Therefore, it cannot be said that the shot must necessarily have been fired from a lower position than where it hit the body of the deceased. This is apart from the fact that the course of a bullet may be deflected on entering the body because of the resistance from tissues and more particularly from bones if it meets any bone on the way. Therefore the position from with the shot was fired cannot be said to have much importance in this case and the discrepancies which have been noticed by the High Court would not in our opinion affect the value of the evidence given by the witnesses.

It was also urged that the witnesses should not have been believed because they were partisan or chance witnesses; in particular it was stressed that the High Court has not given convincing reasons for believing Chhannu who had not been relied upon by the trial court. Leaving out the evidence of Chhannu, we have still the evidence of three other witnesses belonging to this very village who gave reasons why they were present near the spot though they live some distance away. These three witnesses have been believed by the trial court as well as by the High Court and we see no reason to disagree with the estimate of their evidence by the two courts; nor do we see any reason to disagree with the estimate by the two courts of the value of the dying declarations in this case.

As for the evidence of Chhiddu, we agree with the estimate of the High Court that he being a cousin of Tori Singh was prevailed upon the make a confession. He could do so almost with impunity, because the prosecution case definitely was that the assailants were only the two appellants and no one else. The only evidence that was referred to in this connection is the statement of the deceased in the dying declaration that Chhiddu was a cousin of Tori Singh (vide Ex. Ka-8). It is not clear why the deceased said so; but in any case it cannot be inferred from this that the deceased was naming him because he was the man who had shot him.

In the circumstances when both the courts have accepted the evidence of three of the eye-witnesses and the dying declarations there is in our opinion no cause for interference with their conclusion that the incident took place in the manner alleged by the prosecution. The conviction of the appellants must therefore be upheld.

Lastly, it was urged that we might consider reducing the sentence of Tori Singh to imprisonment for life on the ground that he acted as he did under the influence of his father. There is no doubt that Tori Singh shot at the deceased at the instigation of his father; but he is a mature man of 25 and the evidence shows that he was sitting with the pistol along with his father. Obviously therefore murder must have been planned between the father and the son, as they were apparently expecting that the deceased would pass that way in connection with his morning ablutions. Tori Singh cannot be considered to be a young boy in his teens who would be completely under the influence of his father, and in the circumstances we see no reason to interfere with the sentence of death passed on him by the trial court and confirmed by the High Court. The appeal fails and is hereby dismissed.

Appeal dismissed.

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