

Shambhoo

Vs

State of Uttar Pradesh

Criminal Appeal No. 108 of 1961

(J. L. Kapur, K.C. Das Gupta, Raghuvar Dayal JJ)

20.02.1962

JUDGMENT

DAS GUPTA, J. -

The appellant, Shambhoo, was tried by the Additional Sessions Judge, Moradabad for offences under sections 302 and 394 of the Indian Penal Code and s. 19(f) of the Indian Arms Act. Two other persons Altaf and Shaukat were also tried along with Shambhoo on charges under s. 394 of the Indian Penal Code read with s. 34 of the Indian Penal Code.

The prosecution case is that on November 3, 1959 Dulla and Ghasita, father and son and one Bhasu were on their way to Tahirpur Bazar for the purchases of bullocks. They had been to Chandarpur Bazar for this purpose but had not made any purchases, - all the three were carrying money. Dulla had Rs. 300/-, Ghasita had Rs. 100/- and Bhasu had Rs. 1051. Shortly before noon they reached Mauza Bhainsora. When they were near a tank about two or three furlongs from Bhainsora these four persons, Shambhoo, Altaf, Sibte and Shaukat, of whom Shambhoo and Sibte were armed with pistol and Shaukat and Altaf were armed with lathis, came out of a wheat field nearby. When they demanded money from Dulla, Bhasu and Ghasita, Ghasita delivered the money readily, but his father Dulla resisted. At this Shambhoo fired his pistol and shot Dulla dead. Shambhoo then took out Rs. 300/- from Dulla's pocket, while Shaukat took away the money from Bhasu after giving him a lathi blow. The alarm which Dulla, Bhasu and Ghasita raised when the robbers attacked them, however, brought to the place a number of persons who were working in the fields and these succeeded in felling Shambhoo and Altaf with their lathis so that they could not get away. The other two, Shaukat and Sibte, however, managed to escape, even though they were pursued by these villagers. In the course of the pursuit Sibte fired his pistol causing bullet injuries to Lal Singh, Mahendra and Udaibir, who were among the pursuers.

Leaving the two persons who had been arrested and the pistol and twelve live cartridges which were seized from Shambhoo at the place of occurrence Ghasita accompanied by Kalu Chowkidar went to the Thana which was about 4 miles off. The information of the occurrence as given by him was recorded and the officer-in-Charge, proceeded to the place of the occurrence and after taking Altaf and Shambhoo into custody and also the live cartridges, the pistol and one used cartridge case, investigated the case. Dulla's dead body was sent for post mortem examination, Shambhoo's injuries as also the injuries of Lal Singh, Mahendra and Udaibir were also medically examined.

All the accused pleaded not guilty. The defence of the present appellant was that he had enmity with Talebar Singh and that he was arrested by Telebar and others on the date of the occurrence when he stopped at a well for bathing on his way back home from Moradabad. He examined a defence

witness in support of his story that he was taking his bath near a well when he was arrested.

To prove its case the prosecution relied mainly on the testimony of Ghasita and Bhasu and of six persons who came on hearing the alarm, namely, Kalu Singh, Kalu Chowkidar, Mahendra Singh, Talebar Singh, Lal Singh and Udaibir Singh. These 8 persons have given practically the same account of the occurrence and there is no doubt that if they are believed the case would stand proved against all the accused persons.

The learned Additional Sessions Judge was however of the opinion that even though apparently there appeared to be no reason for discarding the testimony of the eye-witnesses, there were several circumstances in the case, especially, the medical evidence as regards the injuries on Shambhoo and on Mahendra, Lal Singh and Udaibir Singh which left considerable room for reasonable doubt about the veracity of the prosecution story and that the accused were entitled to the benefit of doubt. Accordingly, he acquitted all the three accused.

On appeal by Government the Allahabad High Court set aside this order of acquittal as regards Shambhoo and Altaf and has convicted Shambhoo under ss. 302 and 394 of the Indian Penal Code and under s. 19(f) of the Arms Act and sentenced him to death under s. 302, Indian Penal Code, to four years' rigorous imprisonment under s. 394 and to one years' rigorous imprisonment under s. 19(f) of the Arms Act. Altaf was convicted and sentenced to four years' rigorous imprisonment under s. 394 of the Indian Penal Code. The Government appeal against the acquittal of Shaukat was dismissed.

Shambhoo has appealed to this court under Art. 134(1)(a) of the Constitution.

The accused was not represented by Counsel and himself said what he wanted to say before us. Mr. Chari, a Senior Counsel of this Court however appeared as an amicus curiae and submitted arguments in support of the appeal. As already stated, the direct evidence given by the eight witnesses mentioned earlier, is that this appellant shot Dulla dead when the latter offered resistance in making over the money which he had with him on demand by the appellant and his companions and that than the appellant removed Rs. 300/- from Dulla's pocket.

The question for our consideration is whether the High Court was right in believing this evidence.

The suggestion made by the accused that he has been falsely implicated by the witnesses at the instance of Talebar does not bear a moment's scrutiny. There is, apart from his own statement nothing to show that Talebar had any enmity with him. Even if Talebar had any enmity there is nothing to indicate that any of the other witnesses are at all under Talebar's influence. The suggestion that the appellant has been wrongly involved in the case at the instance of Talebar was therefore rightly rejected by the learned Sessions Judge as also by the High Court and has indeed not been pressed before us by Mr. Chari. It is true however as pointed out by the learned Sessions Judge that even if there be no apparent reason in a case to explain why witnesses are telling a lie against an accused person circumstances brought out by the evidence may show that in fact their evidence cannot be safely relied upon.

The two main circumstances to which Mr. Chari drew our attention and to which the learned Sessions Judge also appears to have attached great weight are : (1) that while according to the witnesses the appellant was felled by them with lathies the medical evidence discloses only one injury on Shambhoo which could have been caused by a lathi and (2) the injuries received by Lal

Singh, Mahendra and Udaibir Singh are not such as would be caused by Sibte's firing of which the witnesses have spoken.

It is true that the eye-witnesses have spoken generally of those who arrived on hearing the alarm as having used their lathies and reading their evidence one would have expected a number of lathie injuries on Shambhoo's person. It is equally true that though the medical evidence shows as many as 15 injuries on Shambhoo, 14 of these are only abrasions, while one (Injury No. 7) is a swelling on the outer aspect of the right ankle. It is clear that Injury No. 7 could have been caused by a lathi blow, while the other 14 injuries could not have been so caused. We do not think however that this gives any reason to disbelieve the evidence of the witnesses as to what they saw. What appears to have happened is that one single lathi blow was sufficient to bring Shambhoo down and after that no lathi blow was given to him but he was dragged and thus received the numerous abrasions on his body. It is not unnatural in circumstances like these that all those who came on hearing the alarm would try to take the credit of felling the robber. That, we think, is responsible for the general statement that all of them used their lathies. This exaggeration of what they did does not justify any doubt of their veracity.

The learned Sessions Judge seems to have also thought that if these witnesses saw what they claim to have seen, the attack on Shambhoo would have been more ferocious. With this we are unable to agree. It has to be remembered that these villagers who arrived on hearing the alarm were not related to Dulla. Indeed, it would appear that Dulla and his companions were unknown to them. There is nothing unlikely or unnatural in the fact that they were content with securing Shambhoo and did not injure him further.

According to these witnesses Sibte fired his pistol at his pursuers, amongst whom were Lal Singh, Udaibir Singh, Mahendra and others. The medical examination shows that on November 4, 1959 that is, the date after the occurrence - when the Doctor examined the persons of Mahendra, Udaibir and Lal Singh he found one scabbed abrasion 1/8" x 1/8" on the front of upper part of left leg 12-1/2" above the left knee on Mahendra; (2) One scabbed abrasion 1/6" x 1/8" on the front to the right side of the abdomen at 5 O'clock position from the right nipple 5" away on the person of Lal Singh and (3) abrasions on the person of Udaibir Singh - one abrasion 1/10" x 1/2" on the inner side of the left leg, 11" above the left knee and the other abrasion 1/2" x 1/6" to the front of right leg, 8" below the right knee in the middle. We can see no reason to doubt the testimony of the witnesses and do not think it at all unlikely that injuries of this nature were caused by pellets ejected by a firearm. The medical examination therefore far from being inconsistent with the account given by the witnesses, as urged by Mr. Chari lends support, in our opinion, to their account.

The next circumstance which in the opinion of the Sessions Judge throws doubt the truth of the prosecution story is that the robber should attack at a place so close to where many people were working. We are unable however to see any thing unlikely in robbery being attempted at such a place. At least two of the miscreants, according to the witnesses, were armed with fire arms and that itself was sufficient to make them bold and to hope that the people working in the field nearby would not dare come to the assistance of Dulla and his companions. The learned Judge seems to have thought that there was no place where the miscreants could have concealed themselves. In thinking thus he appears to have overlooked the evidence that sugarcane high enough to afford good place for concealment was growing in several fields nearby.

The learned Sessions Judge also thought it strange that there was no injury on the person of Ghasita and Bhasu and said : "It does not stand to reason that the robbers would leave these two persons

without leaving any injury on them." We find it difficult to understand why the learned Judge thought so. Robber armed with pistol do not always use them unnecessarily. A pistol was used on Dulla as he did not readily hand over the money with him. Ghasita and Bhassu did not offer such resistance. That itself would explain why they were not fired upon. It may be mentioned here that according to the evidence, one of the miscreants did use his lathi on Bhassu.

After a careful consideration of evidence we are unable to discover any circumstance that justifies any doubt about the truth about the prosecution story as against the appellant. Mr. Chari however urged that in any case the fact that though the pistol which the appellant fired was according to the evidence, seized from him it was not sent to the ballistic expert for examination is a good reason for rejecting the evidence of the eye-witnesses. The witnesses already mentioned have said that when Shambhoo was secured the pistol from which he had fired the fatal shot was seized from him and that one empty cartridge case was recovered from inside that pistol and 12 more cartridges were recovered from the appellant's person and that these were made over to the Sub-Inspector when he arrived. The Sub-Inspector's evidence is that he received from Kalu Singh the pistol which was marked Ex. I in the case and 12 live cartridges. He took these, as well as the empty cartridges case into his custody. It is equally clear that neither the pistol nor these cartridges were sent to any ballistic expert. While we think the Sub-Inspector would have done well to send the pistol and the ammunition, especially the empty cartridges case, to a ballistic expert for his opinion, we are unable to accept Mr. Chari's contention that this omission furnishes any reason to doubt or reject the evidence of the eye-witnesses. Mr. Chari has placed strong reliance on this Court's decision in *Mohinder Singh v. The State* ((1950) S.C.R. 821.) and has drawn our attention to the following observations made therein by Fazl Ali, J. :-

"In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused."

This was a case in which the prosecution charged one Mohinder Singh with having caused fatal injuries on one Dalip Singh with a gun. The gun-P-16 was identified as the gun with which Mohinder Singh fired at Dalip Singh. The High Court was not satisfied about the identification and appears to have also been doubtful whether the injuries could have been caused by a gun. This Court after agreeing with the High Court that it was doubtful whether the injuries which were attributed to the appellant were caused by a gun or by a rifle thought that it was more likely that were caused by a rifle than by a gun and the Court proceeded to observe :- "It is only by the evidence of a duly qualified expert that it could have been ascertained whether the injuries attributed to the appellant were caused by a gun or by a rifle and such evidence alone could settle the controversy as to whether they could possibly have been caused by a firearm being used at such a close range as is suggested in the evidence."

It has to be noticed that in that case one Dr. Goyle, Director of the C.I.D. Laboratory has stated in his evidence that the gun cartridges which were seized could have been fired through the gun P-16 though he could not say whether they were actually fired from that particular gun a similar gun or guns." The High Court rejected the evidence of Dr. Goyle and considered the nature of the wound could have created a serious difficulty in the case. It was in these circumstances of that case that this Court made the observations on which reliance has been placed and held that the evidence of the witnesses could not be relied upon.

It has to be noticed that in the present case there is not only no reason to think that the injuries of which Dulla died could not have been caused by the pistol but on the contrary the nature of the injuries as shown by Dr. Nigam who held the post mortem examination is wholly consistent with the prosecution theory that a pistol was used.

The external injuries as found on the body were described by the Doctor were as follows :-

"Five gun-shot wounds (entrance) each 1/4"x 1/8". Scorching was present on the margins of these wounds. Four of these wounds were going to the chest cavity and the fifth one on the outer side was bone deep. The five wounds were in an area 4-1/2" x 4-1/2". These injuries were on right side of chest about 1-1/4" to the upper and inner side of right chest. The outermost injury was about 1-1/2" below right side. One bullet about 3/4" was extracted from the flesh from the inner side of this wound."

He proceed to give the internal examination of the body in this manner :-

"The second, third and fourth right ribs were broken in several pieces in the front and back side. Clotted blood was present beneath the external injuries and there were four holes in the chest underneath those injuries, each hole being 1/4" x 1/8" and all going inside the chest. Underneath the external injuries were four holes 1/4" x 1/8" through and through in the right pleura. There were 4 holes 1/4" x 1/8" in the right chest, 3 being through and through and one being 1" deep. All of them were in the upper part of right lung. About 3 pounds of blood was present in the chest cavity. One shot was extracted from the right lung. Three shots were extracted from the right side upper part of back underneath the skin. Abdominal cavity was empty and normal. The bladder contained about 2 Oz. of urine."

In the cross-examination he stated : "I cannot tell whether the injuries received by the five bullets were caused by 1 shot or many."

The very fact that the Doctor used the word "bullets" in this statement in cross-examination shows that he understood the word to include pellet. Once that becomes clear it appears to us that the Doctor's evidence does not at all go against the prosecution case that the injuries were caused by one shot from a pistol. The absence of the ballistic expert's evidence is therefore no reason to doubt the testimony of the eye-witnesses. Kasimullah, one witness who was examined by the appellant on his behalf said that it was when the appellant was washing his hand and face at the Haudia near a well at Jayantipur that Talebar came with 7 or 8 persons and arrested him. In cross-examination he stated that on several occasions he had purchased "Singharas" from Shambhoo at Sedhari Bazar and was so known to him.

On an examination of the entire evidence on the record we have come to the conclusion that the account given by the witnesses mentioned earlier as regards what the appellant did and how he was arrested is true and this witness Kasimullah has given false evidence to help Shambhoo.

As this Appeal is under Art. 134(1)(a) of the Constitution we have re-appraised the evidence for ourselves and on such reappraisal have come to the conclusion that the view taken by the High Court that persons claiming to be eye-witnesses of the occurrence have told the truth and their evidence proves beyond reasonable doubt that the appellant committed the offence of murder

punishable under s. 302 of the Indian Penal Code by causing the death of Dulla and that he also committed an offence under s. 304, Indian Penal Code and s. 19(f), Arms Act, is correct. We are also of opinion that the High Court was right in passing the sentence of death under s. 302 of the Indian Penal Code.

The appeal is accordingly dismissed.

Appeal dismissed.

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