Prabhu

Vs

State of U.P.

Criminal Appeal No. 50 of 1962

(A. K. Sarkar, K. C. Das Gupta, M. Hidaytullah JJ)

03.05.1962

JUDGMENT

S.K. DAS, J. –

The learned Sessions Judge of Rae Bareli tried the appellant Prabhu on a charge of murdering his own uncle and found him guilty of the offence and sentenced him to death. There were an appeal to the High Court and the usual reference for confirmation of the sentence of death. The High Court dealt with the appeal and reference by one judgment. It accepted the reference, dismissed the appeal and confirmed the conviction and sentence. The appellant then asked for and obtained special leave of this Court to appeal from the judgment and order of the High Court. The present appeal has come to us in pursuance of the leave granted by his Court.

Shortly stated the case against the appellant was this. Bhagwan Ahir, step-brother of the appellant's father Budhai, was resident of village Bandi in the district of the Rae Bareli. The appellant and his father Budhai lived in another village called Gulariya at a distance of about two or three miles from Bandi. Bhagwan had about four bighas of pasture land and seven bighas of cultivated land. He had no male issue. He had several daughters who were all married and resided at the places of their respective husbands. Bhagwan was old, near about 80 years of age according to the evidence of Marka, and had no male member in the family to help him with his cultivation. Budhai, it appears, did not reside in village Gulariya all the year round, but was engaged in some job at Burdwan in Bengal. Some four years before the date on which Bhagwan was said to have been murdered the appellant and his mother came to reside with Bhagwan. The idea was that the appellant would be able to help Bhagwan with his cultivation. The appellant did not, however, render much assistance to Bhagwan and the prosecution case was that after about a year of their stay, Bhagwan turned them out of the house. The appellant and his mother then went back to village Gulariya. The prosecution case further was that about a month and a half before the murder of Bhagwan the appellant and his father came to Bhagwan and the appellant's father asked Bhagwan to transfer some of his land to the appellant. Bhagwan said that he had already kept the appellant with him for a year and had found that he was of no assistance. He, therefore, refused to give any land to the appellant. Bhagwan, it appears, had some grand-daughters and one of them called Kumari Sarju aged about five years was staying with him. Bhagwan said that he would give his lands to his grand-daughter Sarju.

On the night between March 19 and 20, 1961, Bhagwan was sleeping in front of his house on a cot with his grand-daughter. One Naiku (P.W. 1) was sleeping at a short distance from Bhagwan's house. Naiku was a neighbour of Bhagwan. At about midnight Naiku heard some noise and called out to Bhagwan. There was no response. Naiku then heard the sound of shoes as though somebody was running away from the place. Naiku called out certain other persons and went near the place where

Bhagwan was lying on his cot. It was found that Bhagwan had a large number of injuries on the head an neck, most of the injuries being of an incised nature. Bhagwan was already dead. The little girl Sarju though stained with blood which flowed from the body of Bhagwan was not herself injured. She was soundly sleeping on the cot and was not awake when Bhagwan was killed. Naiku gave an information to the police station of what he had heard and seen, the distance of the police station being about eight miles from village Bandi. The information which Naiku gave did not disclose the name of any accused person because Naiku had not seen who had killed Bhagwan.

On the information given by Naiku the local police started investigation and when the dead body of Bhagwan was brought back to the village after the post-mortem examination for cremation, the appellant, it is stated, came to one Briju Lal (P.W. 2) of village Bandi. This was on the third day after the murder. The appellant made certain enquiries from Brij Lal which roused the latter's suspicion. The Sub-Inspector of Police was then in the village and he was informed of the presence of the appellant. The appellant was then interrogated and the case of the prosecution was that the appellant made certain statements and produced from his house a kulhari, a shirt and dhoti. These were found to be blood stained and subsequent examination by the Chemical Analyst and the Serologist disclosed that they were stained with human blood. This recovery of the blood stained kulhari (axe) and the blood stained shirt and dhoti was made, according to the prosecution case, on March 22, 1961, in the presence of two witnesses, Lal Bahadur Singh and Wali Mohammad.

It would appear from what we have stated above that the case against the appellant rested on the evidence relating to motive furnished by what happened about a month and half before the occurrence when the appellant and his father asked for some land from the deceased, and the recovery of the blood stained axe and blood stained shirt and dhoti from the house of the appellant. The appellant denied that he and his father had asked for any lands from the deceased a month and a half prior to the occurrence. The appellant also denied that he had produced any blood stained axe or blood stained shirt and dhoti from his house, or had handed them over to the Sub-Inspector of Police. He denied that the clothes or the axe belonged to him. His defence was that he was living with his father in Burdwan and came back to the village on March 21, 1961. He said that the case against him was brought out enmity.

Learned counsel for the appellant has taken as through the evidence in the case and has submitted that apart from raising some suspicion against the appellant and his father, the evidence given by the prosecution does not establish beyond any reasonable doubt that the appellant was the murderer. He has further submitted that certain statements alleged to have been made by appellant to the Sub-Inspector of Police in connection with the recovery of the blood stained axe and blood stained shirt and dhoti were inadmissible and the courts below were wrong in relying on them. He has contended that if those statements are excluded from consideration, them the evidence which remains is insufficient to support the conviction of the appellant. We think that these contentions are correct and must be upheld.

There can be no doubt that Bhagwan was murdered on the night in question. The post-mortem examination disclosed that he had sustained as many as thirteen injuries, eleven of which was incised on different parts of the body. The injuries inflicted on the head and face had cut through skull bones and the doctor who held the post-mortem examination was of the opinion that Bhagwan died as a result of fractures of the skull bones and haemorrhage and shock. There can, therefore, be no doubt that Bhagwan was murdered. It is equally clear that nobody saw who killed Bhagwan. The evidence of Naiku (P.W. 1) shows clearly enough that neither he nor other persons whom he called saw the appellant. The grand-child who was sleeping with Bhagwan was also fast asleep and did not

even awake when the injuries were inflicted on Bhagwan. Bhagwan might or might not have raised shouts when the injuries were caused to him. The evidence of Naiku does not disclose that he heard any other sound excepting the sound of movement of steps of a person wearing shoes.

We are satisfied that the evidence as to motive is satisfactory. Both Naiku (P.W. 1) and Brij Lal (P.W. 2) have stated about the motive. The appellant and his mother stayed with Bhagwan about four years ago in order to render assistance to Bhagwan in his cultivation. The appellant did not, however, do any work and was turned out. This is proved by the evidence of Naiku and Brij Lal. The evidence of the aforesaid two witnesses also establishes that the appellant and his father came Bhagwan about a month and half before the occurrence and asked for some land. Bhagwan refused to give any land to the appellant. We think that this motive has been established even though it would influence both the appellant and his father.

The main difficulty in the case is that the evidence regarding the recovery of blood stained axe and blood stained shirt and dhoti is not very satisfactory and the courts below were wrong in admitting certain statements alleged to have been made by the appellant in connection with that recovery. According to the recovery memo the two witnesses who were present when the aforesaid articles were produced by the appellant were Lal Bahadur Singh and Wali Mohammad. Lal Bahadur Singh was examined as prosecution witness No. 4. He did give evidence about the production of blood stained articles from his house by the appellant. The witness said that the appellant produced the articles from a tub on the eastern side of the house. The witness did not, however, say that the appellant made any statements relating to the recovery. Wali Mohammad was not examined at all. One other witness Dodi Baksh Singh was examined as prosecution witness No. 3. This witness said that a little before the recovery the Sub-Inspector of Police took the appellant into custody and interrogated him; then the appellant gave out that the axe with which the murder had been committed and his blood stained shirt and dhoti were in the house and the appellant was prepared to produce them. These statements to which Dobi Baksh (P.W. 3) deposed were not admissible in evidence. They were incriminating statements made to a police officer and were hit by ss. 25 and 26 of the Indian Evidence Act. The statement that the axe was one with which the murder had been committed was not a statement which led to any discovery within the meaning of s. 27 of the Evidence Act. Nor was the alleged statement of the appellant that the blood stained shirt and dhoti belonged to him was a statement which led to any discovery within meaning of s. 27. Section 27 provides that when any fact is deposed to and discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovery may be proved. In Pulukuri Kotayya v. King Emperor [(1947) L.R. 74 I.A. 65] the Privy Council considered the true interpretation of s. 27 and said :

> "It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the information to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which stabbed A.', these

> words are inadmissible since they do not related to the discovery of the knife in the house of the informant." (p. 77)

We are, therefore, of the opinion that the courts belong were wrong in admitting in evidence the alleged statement of the appellant that the axe had been used to commit murder or the statement that the blood stained shirt and dhoti were his. If these statements are excluded and we think that they must be excluded, then the only evidence which remains is that the appellant produced from the house a blood stained axe and some blood stained axe and some blood stained clothes. The prosecution gave no evidence to establish whether the axe belonged to the appellant or the blood stained clothes were his.

Therefore, the question before us is this. Is the production of the blood stained axe and clothes read in the light of the evidence regarding motive sufficient to lead to the conclusion that the appellant must be the murderer ? It is well-settled that circumstantial evidence must be such as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused person and not with his innocence. The motive alleged in this case would operate not only on the appellant but on his father as well. From the mere production of the blood stained articles by the appellant one cannot come to the conclusion that the appellant committed the murder. Even if somebody else had committed the murder and the blood stained articles when interrogated by the Sub-Inspector of Police. It cannot be said that the fact of production is consistent only with the guilt of the appellant and inconsistent with his innocence. We are of the opinion that the chain of circumstantial evidence is not complete in this case and the prosecution has unfortunately left missing links, probably because the prosecution adopted the shortout of ascribing certain statements to the appellant which were clearly inadmissible.

Learned counsel for the respondent has submitted to us that in State of U.P. v. Deoman Upadhyaya [(1961) 1 S.C.R. 14] this Court accepted as sufficient evidence the production of a blood stained weapon. We are unable to agree. The circumstantial chain in that case did not depend merely on the production of the gandasa, but on other circumstance as well. The Court held in that case that the circumstantial chain was complete and the decision did proceed merely on the production of a blood stained weapon.

For the reasons given above we would allow the appeal and set aside the conviction and sentence passed against the appellant. The appellant must now be released forthwith.

Appeal allowed.

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