

Nand Kumar & Others

Vs

State of Rajasthan

Criminal Appeal No. 181 of 1961

(J. R. Mudholkar, K. C. Das Gupta JJ)

03.05.1962

JUDGMENT

DAS GUPTA, J. –

On June 4, 1960 eight boys (1) Munna son of Manohar Lal; (2) Ram Prakash son of Ram Baboo; (3) Laxmi son of Vidhya Ram; (4) Pooran son of Gulab Chand; (5) Kedar son of Ram Kumar; (6) Mohan son of Banke Lal; (7) Suresh son of Chandra Shekhar and (8) Jagdish son of Mittha Lal, all of Dholpur City went to the temple of Mangal Bharti for a picnic. None of them returned home. On the morning of June 6, all these boys were found dead near a well in Gundarai forest. Each of the bodies bore numerous injuries, which according to the evidence of doctor, who held the post mortem examination, caused the deaths. Seven of the bodies were found naked; only the dead body of Munna had clothes on. The hands of each were tied from behind with ribbons of their trousers and their mouths were found gagged. Watches and rings, buttons and currency notes, which some of these boys had with them had disappeared.

The four appellants, viz., Nand Kumar, Brij Kishore, alias Kalua, Lakhan and Murari along with one Jagdish were all convicted for the murder of these eight boys under s. 302 of the Indian Penal Code and were all sentenced to death. All of them were also convicted by the additional Sessions Judge under s. 377 of the Indian Penal Code and s. 395, Indian Penal Code.

The conviction of these four appellants under s. 302 was confirmed by the High Court of Rajasthan and the sentences of death passed on Nand Kumar, Kalua and Lakhan were also confirmed. The High Court reduced the sentence on Murari to one of imprisonment for life. The conviction of all the appellants under s. 395 of the Indian Penal Code and the sentences passed thereunder were also confirmed. The present appeal is by special leave granted by this Court.

The prosecution case is that when the eight boys were at Mangal Bharti temple on June 4, 1960 these four appellants and Jagdish joined them there. In the evening before they all left the temple, these appellants took Munna and his seven companions one by one into a narrow lane behind the temple and robbed them of their belongings and valuable by force. All the 13 then left the temple together but instead of returning to Dholpur City, the appellants took the boys to the Gundarai forest. It is said that before the appellants took the boys to Gundarai they had agreed among themselves to murder them. They all waited near a pillar till about 9-30 p.m. after which while Jagdish and Murari remained near the boys to keep watch over them - Jagdish being armed with a gun - first of all Munna was called away from the other boys and killed by the other three, viz., Nand Kumar, Kalua and Lakhan. The other seven were also taken away one by one and killed by these three. For these killings they used a knife which belonged to Murari and which Murari had

brought with him on that day. After all the eight boys had been killed the booty was distributed among these five. Nand Kumar took in his share an agfa camera which had been taken from Munna and also Munna's wrist watch; Lakhan got a wrist watch and a ring which had belonged to Ram Prakash; Kalua's share was a wrist watch belonging to Laxmi Chand and also a ring which belonged to him. Murari got four buttons and some money in cash and Jagdish also got some buttons and cash.

The relatives of the boys had become anxious when the boys did not return on the night of June 4. Information was received from Puran, also of Dholpur City, who had also gone to the Mangal Bharti on that day that he had seen the eight boys and also Nand Kumar, Kalua, Jagdish and Murari together at the Mangal Bharti. Inquiries were then made at the houses of these five but they were all found absent. On the following morning, i.e., the 5th June, 1960 at 6 a.m., Shiv Narain, the brother of Munna lodged information with the Kotwali police Dholpur about the disappearance of these boys. He added his suspicion that these boys might have fallen into the hands of dacoits belonging to the Panna dacoit's gang and kidnapped by them. On the same day at about 10 p.m. Bhanwar Singh, the Circle Inspector of Dholpur succeeded in contacting these appellants. Ultimately all the five made statements which were recorded, giving information about their having kept the articles taken from some of the boys. At about 4 a.m. on June 6, 1960, the Circle Inspectors accompanied by the Deputy Superintendent of Police left for Gundarai forest in a police jeep along with the appellant Nand Kumar and some other persons. Nand Kumar led the police to the top of a small hill and pointed out the five cycles of Munna and his companions lying at one spot and the dead bodies of the eight boys lying at different places in the vicinity of the hill in the jungle. He also took out a knife, Ex-18, from bush near one of the dead bodies. Then Nand Kumar went to this house with the police and there pointed out a camera and a wrist watch which had fallen to his share. He also brought out certain blood-stained clothes. After this the appellant Murari was taken by the police to his house and the brought out a gold ring with the name of R.P. Gupta inscribed in enamel, a wrist watch belonging R.P. Gupta deceased and some blood-stained clothes. The police then took Murari to his house where Murari brought out some gold buttons and currency notes. The Kalua took the police to his house and brought out a wrist watch and a ring inscribed with the name of S.K. Gupta and also some blood stained clothes. According to the prosecution three of these appellants, viz., Nand Kumar, Murari and Kalua made confessions before the Sub-Divisional Magistrate which were recorded by the Magistrate - Nand Kumar on the 14th June, Kalua on the 15th June and Murari on the 16th June. A statement of Lakhan was also recorded by the Magistrate on the 15th June, 1960.

All the accused pleaded not guilty. They denied that they had made any statement at all before the Magistrate and also denied the recovery of any articles from their houses.

The conviction of each of the three appellants, Nand Kumar, Kalua and Murari on the charge of murder was based by the Trial Court and the High Court on the confession said to have been made by him taken with the circumstances which the Courts below considered sufficient corroboration to established the truth of what was stated in the confession. On behalf of each of these appellants it has been contended before us that the confession was not voluntary and was not admissible in evidence, and secondly, that there was not sufficient corroboration to establish the truth of the confession. On behalf of Nand Kumar and additional plea was pressed that the he made no confessional statement at all before the Magistrate and the document which is now produced as record of his confessional statement was written up in his absence on papers on which Nand Kumar has been made to put his signature. The argument of the learned Counsel, so far as we can understand it was that the jail register entry showing 1.25 as the time when Nand Kumar was brought back to the jail on the 14th June 1960 was originally 10.25 but had been dishonestly altered

to 1.25 by erasing the zero. Proceeding on the basis that 10.25 was the time noted the learned Counsel argues that this shows that Nand Kumar was not before the Magistrate from 10.30 onwards when according to the record of the confession, Ex-62, the Magistrate was recording his confession. In the first place we do not find any reasonable ground for the thinking that the entry originally made was 10.25. As the entry stands, it is 1.25 and there is no evidence, circumstantial or otherwise to indicate that it was not so all along. Even supposing it was originally 10.25 and then altered to 1.25 the only reasonable conclusion would be, if the Magistrate's own evidence on the presence of the accused before him is taken into consideration, that somebody had made a mistaking the entry and then corrected it to 1.25. We agree with the High Court that there is absolutely no reason to about the testimony of the Magistrate on this point and there can be no possible doubt whatsoever that the record Ex-P-62 contains what was stated by the accused Nand Kumar before the Magistrate on June 14, 1960.

As regards each of these confessions, the learned Counsel has urged, as already, indicated, that it was not voluntary. Three grounds were urged in support of the contention. They are, (1) that there was a delay of about a week or more in sending the accused to the Magistrate for recording the confessions; (2) that Circle Inspector Paras Singh visited the Judicial lock up, where these confessing accused had been kept on the 13th June; and (3) that the confessing accused had been kept on the 13th June; and (3) that the confessing accused had been kept in solitary cells.

As regards the first ground it does not appear that any enquiry was made from the Investigating officer as to why he did not send up the accused for recording his confession earlier. But, if, as is suggested by the learned Counsel, the accused persons were ready to make their confessional statements before the Magistrate as early as the 6th June, it is not clear to us what the police stood to gain by delaying the recording of these confessions. On the contrary, it would seem natural for the police to hurry up with the recording of the confessions lest on second thoughts the accused might refuse to make the statement. In considering the visit of Paras Singh to the judicial lock-up on the 13th June we have to remember that though Paras Singh was not examined as a witness by the prosecution the prosecution did offer to examine him when in the course of the argument a grievance was sought to be made by the defence of such non-examination. The Sessions Judge was prepared to examine him as a Court witness but the defence objected to it. It is not open, therefore, to the Defence Counsel now to complain that Paras Singh was not examined.

It is not disputed that Paras Singh did visit the judicial lock-up on the 13th June. From the petition on which the order permitting him to visit the jail was made, it is reasonable to think, however, that this visit was made for steps in the investigation in some other case having no connection with the present accused. No doubt, as regards the voluntary nature of the confessions, therefore, arises from this visit of Paras Singh to the Judicial lock-up on the 13th June.

Nor can any conclusion be reasonably based on this point from the fact that the accused persons were kept in solitary cells. Such keeping in solitary cells is often considered prudent by the jail authorities for the safety of the confessing accused themselves. It is true that by being kept in the solitary cells an accused is kept away from the influence of other under-trial prisoners who might try to induce them to resile them from the confession, but it is no ground for thinking that when a particular accused had been kept in a solitary cell the confession made by him was not voluntary.

We are satisfied that the confessions of all these three accused were voluntary and rightly admitted into evidence. Each of the accused however retracted the confession made by him. Courts ordinarily consider it unsafe to convict any accused person on the basis of his retracted confession except

where the truth of such confession is established by corroboration in material particular by independent evidence, what is sufficient corroboration for this purpose has to be decided in each case on its own facts and circumstances. It may, however, be generally stated that where the prosecution by the production of reliable evidence which is independent of the confession and which is also not tainted evidence like the evidence of an accomplice or the evidence of a co-accused, establishes the truth of certain parts of the account given in the confession and these parts are so integrally connected with other parts of the accused's confession, that a prudent judge of facts would think it reasonable to believe, in view of the established truth of these parts, that what the accused has stated in the confession as regards his own participation in the crime is also true, that is sufficient corroboration. More than this is not needed, less than this is ordinarily insufficient.

Applying this test to the three retracted confessions before us, we are satisfied that the High Court was right in its conclusion that each of these confessions has been so well corroborated by independent evidence in material particulars that what the accused has said in the confession as regards his own participation in the crime has been proved to be true.

Turning first to Nand Kumar's confession, we find that after describing how with the other four accused persons he went to Mangal Bharti with a gun which belonged to one Fakhruddin and took part in the picnic with the 8 boys, Munna and his companions there, goes on to say about the conspiracy to rob these boys of their valuables and then actually robbing them of these valuables. He further states in the confession how they further conspired to take all the boys "under the pretext of sight seeing walk (Sair ka Bahana) and saying them to reach the city en-route Gundarai and Barakhambha and to return their articles there and to murder them after taking them to some lonely place" took the boys to Gundarai and there how one by one all the 8 boys were killed by himself. Kalua and Lakhan stabbing them with the knife which Murari had brought. He further stated that after the boys had been murdered the booty was distributed amount themselves and he took in his share Munnas Agfa camera and a wrist watch belonging to Munna. Not only has the prosecution established by independent evidence that Nand Kumar with the other accused went to Mangal Bharti and met the 8 boys there and remained with them for some time taking part in the picnic, but it has further been proved by reliable and independent evidence that Munna's Agfa camera and the wrist watch belonging to him which he had taken with him that day to Mangal Bharti were recovered from Nand Kumar's house and that it was actually he who produced these himself from behind the floor carpet on the Tand of his house and that he also produced some clothes lying behind the floor carpet, viz, a white banian and a langot and a white shirt smeared with blood. There is satisfactory evidence that the blood on these articles was human blood.

It is necessary to mention also that the fact that he had knowledge of where the dead bodies were, was discovered by a statement made by him before the police, which has been rightly admitted into evidence under s. 27 of the Evidence Act and on the morning of June 6, 1960 it was he who took the police party to the place where the bodies were. The knife, Ex. 18, was also pointed out by him from under a bush near one of the dead bodies after he had previously stated that he had left the knife at the place of occurrence.

These facts and circumstances provide overwhelming corroboration of Nand Kumar's confession that he was one of the three persons who inflicted the injuries on the 8 boys which caused their deaths. He has, therefore, been rightly convicted under s. 302 of the Indian Penal Code.

Kalua also confessed having been one of the three who inflicted knife injuries on some of the boys and having held some of the other boys while his companions, Nand Kumar and Lakhan inflicted

the injuries. Besides describing the visit to the Mangal Bharti and meeting the eight boys there he also spoke about robbing the boys of their belonging and thereafter about the conspiracy to kill the boys after taking them to Gundarai. He went on to say in the confession how the boys were taken to Gundarai and murdered there. He further stated about the distribution of the booty and said that he got in his share the wrist watch belonging to Laxmi and the ring on which the name of S.K. Gupta was written. Kalua's presence at the Mangal Bharti and meeting the eight boys there have been proved by independent evidence. It has also been established by reliable independent evidence that the wrist watch of Laxmi and also his ring, which originally belonged to his brother Sri Kishan Gupta and so bore the inscription S.K. Gupta, were recovered from Kalua's house and that it was Kalua himself who produced these from inside a box on a Tand in his house and further that Kalua himself produced a trouser and a shirt from behind another box laying behind the same Tand both of which articles had blood marks. It has been established satisfactorily that the blood was human blood. These facts and circumstances provide sufficient corroboration of Kalua's confession. He has, therefore, been rightly convicted under s. 302 of the Indian Penal Code.

Murari also spoke in his confession of how he went the Mangal Bharti and met the eight boys; about the conspiracy to rob the boys of their belongings and how they were actually robbed and thereafter of the conspiracy of taking the boys to Gundarai and killing them there. He also spoke in his confession of how after the boys were taken to Gundarai forest the boys were called one by one and killed while he and Jagdish remained guard over the boys when they were waiting for their turn to be called. He has mentioned in his confession about his taking his own knife with him and has also stated that this knife was used in committing the murders. Speaking about the distribution of the booty he said that he got in his share four buttons, one of which was completely of gold while the other three were gold topped. Independent evidence has established in addition to Murari's presence at Mangal Bharti and his meeting with the eight boys there, the recovery of four such buttons and Rs. 48/- in currency notes and that it was Murari himself who produced these buttons and the notes from inside a box in his room after he himself made a statement, which was rightly admitted under s. 27 of the Evidence Act, about having kept these things in his house. The knife (Ex-18) which was found near one of the dead bodies was also identified by witness Ram Singh (P.W. 14) as the knife which he had seen Murari carrying before the occurrence. It is not an ordinary knife. It is a long knife of which the blade is 6 inches long and the handle 7 inches, with a special button arrangement on pressing which it opens and closes.

These facts and circumstances established by independent evidence provide sufficient corroboration of Murari's own confession that in furtherance of a common intention of himself and his companions to kill these eight boys he kept guard over the boys when one by one they were being called away and killed by his companions, Nand Kumar, Kalua and Lakhan. He has, therefore, been rightly convicted under s. 302 of the Indian Penal Code.

The fourth appellant, Lakhan, did not confess having participated in any of the crimes. To prove the charge under s. 302 of the Indian Penal Code against him the prosecution relied on a number of circumstances. (1) His presence with Nand Kumar and others at Mangal Bharti and meeting the eight boys there; (2) the recovery from his room of part of the booty taken from the boys, viz a gold ring bearing the inscription R.P. Gupta, and a wrist watch; (3) the recovery of a blood-stained banian and under-wear from his room and (4) the fact that these were produced by Lakhan himself after he had made a statement that he kept these things in his house. Along with this the prosecution wants the court to take into consideration the statement made in the retracted confessions of Nand Kumar, Kalua and Murari that Lakhan took actual part in the killing of the eight boys. The circumstances mentioned above have clearly been established by legal evidence and they themselves

are almost sufficient, without anything more, to justify a conclusion that Lakhan took part in the killing of the eight boys in furtherance of the common intention of himself and other to cause their deaths. It is proper and quite permissible to take into consideration, then, the statements made as regards the part taken by him in the retracted confessions of Nand Kumar, Kalua and Murari. These statements supply whatever assurance was needed to convince the court that Lakhan took part in the killing of the eight boys in furtherance of the common intention of himself and others. His conviction under s. 302, Indian Penal Code was, therefore, fully justified.

Some argument was addressed to us on the question of motive. It has been urged that while according to the confessions Nand Kumar and other decided to kill these boys so that they might not speak about the crimes already committed by the accused, viz, dacoity and sodomy, the learned judges of the High Court seemed to think that Munna was killed by Nand Kumar as an act of revenge for the insult he had offered to Nand Kumar's sister and the other seven boys were killed so that they might not speak about this murder of Munna. The evidence in the present case is so clear to show that these four persons committed the murder of the eight boys that we think it unnecessary to speculate about the motive which induced them to murder the eight boys who had done no harm. Where it was sadistic pleasure or the fear of discovery of robbery, or anything else, the fact remains proved by overwhelming evidence that these four did actually commit the murder of the eight innocent boys.

It is hardly necessary to say anything about the conviction of these persons of an offence under s. 395 of the Indian Penal Code. It is sufficient to mention only that the evidence discussed above in connection with the charge of murder provides sufficient basis for the convictions under s. 395 of the Indian Penal Code.

The sentences of death passed on Nand Kumar, Kalua and Lakhan are the only possible sentences. The High Court has thought fit to treat Murari more leniently and sentenced him only to imprisonment for life. We cannot interfere with that sentence, even though it appears to us that this leniency was uncalled for.

The appeal is dismissed.

Appeal dismissed.

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