

Hazara Singh

Vs

State of Uttar Pradesh

Criminal Appeal No. 120 of 1968

(S. M. Sikri, R. S. Bachawat, K. S. Hegde JJ)

11.02.1969

JUDGMENT

SIKRI J.

1. This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad, dismissing the appeal of Hazara Singh and confirming the sentence of death passed by the additional Sessions Judge.
2. No question of law is involved in this appeal but the learned counsel for the appellant has tried to throw suspicion on the story of the prosecution accepted by the learned Additional Sessions Judge and the High Court. The prosecution story accepted by the High Court is that on the evening of October 7, 1965, a quarrel took place between Karnail Singh, deceased, and Hazara Singh, appellant, over the buffalo of Karnail Singh entering the field of Hazara Singh. Although the parties were separated, Hazara Singh threatened Karnail Singh that he would deal with him later on. During the night Hazara Singh entered the house of Karnail Singh at about 3 a.m. and attacked him with an axe. Karnail Singh's wife, Dalip Kaur, P.W. 13, his daughter Sukhwant Kaur, P.W. 14 and two neighbours Raghbir Singh, P.W. 12 and Harmohendra Pal Singh, P.W. 15, ran to the scene of occurrence and saw Hazara Singh assaulting Karnail Singh. Hazara Singh was pursued for a short distance but he escaped. Harmohendra Pal Singh, after arranging a bullock cart, took Karnail Singh to the Police Station, Sitarganj, where First Information Report was lodged at 8.10 a.m. on October 8, 1965. Karnail Singh was sent to the hospital. Dr. D. C. Pandey attended on him and found two lacerated wounds on Karnail Singh, one above the left eye-brow and the other on the right side forehead. Under the latter injury, the temple bone had been fractured. There was also a marked depression on the right side of the scalp and an abrasion below the above injury. On the advice of Dr. D. C. Pandey, Karnail Singh was taken to Rudrapur hospital, where he was examined by Dr. N. C. Pandey at 3.30 p.m. The doctor sent for a Magistrate to record the dying declaration of Karnail Singh. On October 8, 1965, at 4.15 p.m. the following dying declaration was recorded :

"Hazara Singh has assaulted me while I was sleeping at my house. He has assaulted me between 3 and 4 o'clock in the night. I was sleeping outside the house within the compound. My wife and the members of my family were sleeping there. He had come alone to assault me. He assaulted me with an axe. Then I became unconscious."

The dying declaration is signed by the Magistrate. There is a certificate by the doctor that "Karnail Singh was in a fit condition to give dying declaration, speak and understand the question."

3. Both the High Court and the learned Additional Sessions Judge relied on the dying declarations and the evidence of the four witnesses mentioned above. The learned counsel for the appellant contends that the investigation was belated and it was deliberately delayed at the instance of Harmohendra Pal Singh. The learned counsel says that what happened in fact was that Harmohendra Pal Singh assaulted Karnail Singh and with a view to cover up his part he made a false First Information Report and coached Karnail Singh, who was most of the time unconscious, to say that it was Hazara Singh who had assaulted him. He says that otherwise it is unbelievable that the Police would not start investigations on the case till October 14, 1965.

4. The explanation given by the learned counsel for the State for the delay is that under the U.P. Police Regulations the police is not required to investigate cases falling under Section 325, I.P.C. Mohan Singh, head constable, who registered the case, also says that he registered the case under Section 325, I.P.C. as one not requiring investigation. Regulation 104 of the U.P. Police Regulations, inter alia reads :

"No investigation should be made in the following circumstances, except on the order of the Superintendent of Police, in any particular case, or with the concurrence of the Deputy Inspector-General, in respect of any particular class of offences in any particular area :

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(2) In cases under Sections 325 and 326 of the Indian Penal Code"

There is a note appended to Regulation 104 which reads :

"In all cases of hurt, inflicted with a deadly weapon, the officer in charge of the section should consider whether the circumstances are such as to justify the registration of a case under Section 307 or 308 of the Indian Penal Code. Cases registered under either of these sections must be promptly investigated as matter of course without waiting for the order of the Superintendent of Police or the report of the medical officer."

5. It seems to us that this regulation gave a handle to the head constable, Mohan Singh, not to investigate a case which ought to have been registered by him as a serious case. Karnail Singh, when brought to the Police Station was unconscious and we should imagine that an axe is a deadly weapon, and on the facts stated in the F.I.R. the case could easily have been registered under Section 307 and investigated immediately by the Police. If the theory developed by the learned counsel for the appellant is correct there is no doubt that delay would assist a person to square up the witnesses. The attitude of the investigating officer is really remarkable because even if he did not investigate the case between the 8th and the 10th of October, he should atleast have started investigations immediately after Karnail Singh had succumbed to his injuries. No explanation has been given for the delay in examining the witnesses. On October 10, 1965, when information was received about the death of Karnail Singh, the Sub-Inspector went to the hospital, noted the injuries, sent the body for post-mortem examination, and apparently did nothing afterwards till October 14, 1965.

6. The learned counsel next points out that the story given by the eye-witnesses that Hazara Singh struck two blows from the wrong side of the axe is improbable. He says that in both the dying declaration and the First Information Report a Kulhari or a gadsai had been mentioned, and the

witnesses had to say that the injuries were caused by the blunt side of the weapon because at the time they were examined by the Police the post-mortem report had come.

7. The learned counsel further contends that it is unlikely that the alleged eye-witnesses really saw the attack. He says that there were only two blows given, at the dead of night the assailant must have come quietly. (No witness says that he heard the assailant coming); and it could take hardly a couple of seconds to inflict two blows and run away. According to him, it would be difficult for the witnesses to wake up and see the blows being actually given, as two witnesses, Raghubir Singh and Harmohendra Pal Singh, lived a little distance away and the wife and the daughter were not sleeping right near the deceased.

8. In our opinion these arguments do not destroy the credibility of the dying declaration. If Harmohendra Pal Singh had been the assailant there is no reason why he should not have finished off Karnail Singh before the other people came or while he was taking him to the police station or the hospital. It is hard to imagine that if Hazara Singh is not the real culprit he should have been named by Karnail Singh. It may be that the wife and the daughter did not see the actual assault and only saw the appellant leaving the place after the assault, by he lives next door and could easily have been recognised. It seems to us that this is not a case in which we should interfere with the findings of fact concurrently arrived at by the Additional Sessions Judge and the High Court.

9. We, however, think that in the circumstances of the case the sentence of death should not be imposed. Hazara Singh had an axe and if it was his real intention to murder Karnail Singh he would have used the sharp edge of the axe and not used the axe like a stick. We think that the sentence of life imprisonment will be appropriate in the circumstances of the case.

10. In the result the appeal is partly allowed, the conviction maintained but the sentence of death is changed to sentence for life imprisonment.

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