

Raghunath Singh (ALIAS) Manna and Others

Vs

State of U.P

Criminal Appeal No. 42 of 1968

(CJI M. Hidayatullah, V. Ramaswami - I, G.K. Mitter JJ)

11.03.1969

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave granted to the four appellants from the judgment and order of the High Court of Allahabad rejecting their appeals to that court and accepting the reference made by the Session Judge of Fatehpur. There is no question of law involved in this case and leave to appeal appears to have been given because of a difference of opinion between the two learned Judges of the High Court who heard the appeals in the first instance. On a reference being made to him a third Judge of the High Court held in favour of the acceptance of the reference by the Session Judge. Having heard learned counsel for the appellants at some length we find ourselves unable to come to any conclusion other than that arrived at by the majority Judges of the High Court.

2. Two ladies by the name of Smt. Roop Rani and his sister-in-law (husband's sister) Smt. Bhoori were murdered at about midnight on the night between 22nd and 23rd August, 1965, and Rameshwar Singh, husband of Smt. Bhoori was attempted to be murdered in the house of Smt. Roop Rani in Jamoh, a hamlet of village Lamshta, situate within the Ghazipur police circle in the District of Fatehpur. There were five accused who were charged under Section 148, Section 302 read with Section 149 and Section 455 of the Indian Penal Code. The Sessions Judge gave the benefit of doubt to the accused Sher Bahadur Singh but convicted the other four under Section 302, read with Section 149, I.P.C. for the murder of the two ladies and further under Section 307, read with Section 149, Indian Penal Code for attempting to commit the murder of Rameshwar Singh. They were also convicted under Section 148, I.P.C. but no sentence was awarded on the charge under Section 455, Indian Penal Code.

3. The appellants before us are Raghunath Singh alias Manna Singh, Ram Kripal Singh, Yadunath Singh and Inderwa Rewat; the First three were residents of Jamoh mentioned above while the last appellant was a resident of Babhantara situate at a distance of 4 or 5 furlongs from Jamoh. The deceased, Roop Rani was the widow of one Sripal Singh, a first cousin of the appellant Raghunath Singh. Sripal Singh was murdered in July 1962 leaving Roop Rani as his sole heir. Sripal Singh and Raghunath Singh used to live in the same house which was later on partitioned by setting up a wall between the northern and the southern portions thereof. The appellant Raghunath Singh resided in the northern portion and Roop Rani in the southern portion of the house. Roop Rani was in fear of her life from Raghunath Singh and others and at her request, after the death of her husband, Rameshwar Singh and Smt. Bhoori came to live with her in the same house and look after her property in Jamoh. Sripal and Roop Rani had no issue and the case of the prosecution was that Raghunath Singh who had an eye on the property left by Sripal Singh consisting of 70 or 80 bights

of land did not like the idea of Rameshwar Singh looking after her property or his coming to live in village Jamoh with his wife to protect Roop Rani. This is borne out by an application in writing sent by Smt. Roop Rani to the District Magistrate Fatehpur on September 18, 1962 wherein it was stated that the four appellants wanted to kill her as well as her Nandoi (Rameshwar Singh) to grab her property. The Sessions Judge was of opinion that the appellant Raghunath Singh had a strong motive for committing the murders of Roop Rani, Bhoori and Rameshwar Singh and this was accepted by the majority Judges of the High Court. According to the differing Judge, the evidence of motive while accounting for the commission of the murders might equally well be relied upon in defence to show that the appellants had been falsely implicated. The plea that Smt. Ram Dulari the only other sister of Smt. Bhoori living at a distance of 3 miles from Jamoh had a motive for getting the murders committed was rejected by the Sessions Judge for reasons given by him and we are in full agreement therewith.

4. The only person who claimed to be the eye witnesses to the occurrence was Rameshwar Singh, the person to survive the murderous attack. The other persons who claimed to have seen the accused running away from Roop Rani's house immediately after the incident were Ramnath, P.W. 5 (a servant of Rameshwar Singh), Raja Ram Singh Chauha and his brother, Harish Chandra Singh. It is said that Ram Nath and Raja Ram were sleeping in the verandah of Smt. Roop Rani's house and all these three persons claimed to have seen the five persons who were charged with the crime before the Sessions Judge running away with the phrases in their hands very soon after the occurrence. The other prosecution evidence with regard to the crime was largely formal. The written report of the occurrence was Ex. Ka-2 said to have been scribed by Raja Ram Singh at the dictation of Rameshwar Singh inside the house of Roop Rani. According to the Sessions Judge, it was written out at the police station, Ghazipur where Rameshwar Singh was then early in the morning of the 23rd August, 1965. This report was presented at about 8.30 a.m. and on the basis of this Ex. Ka-7 was prepared and a case under Sections 148/300/302, I. P.C. was registered. The persons who were charged with the crime were the appellants, two other persons named Amaranth Singh and Sheo Nahadur Singh, besides two whose names were not known to Rameshwar Singh. Amaranth Singh was discharged by the Committing Magistrate and Sheo Nahadure Singh was given the benefit of doubt by the Sessions Judge. The version of Rameshwar Singh in the said statement was that he was lying on a cot in a verandah of Roop Rani's house opening on to the inner court yard on the north. To his east in the same verandah and at a distance of a few feet from him his wife was sleeping on another cot. Inside the verandah slept Roop Rani on another cot and there was a lantern burning in the verandah. Rameshwar Singh opened his eyes and saw the appellants and Sheo Bahadur Singh scaling the partition wall into Roop Rani's courtyard armed with small lathies fitted with pharsas. He as well as the two ladies raised an alarm; they got up from their cots and tried to run away but they were pushed down by the said persons who started assaulting all three with pharsas. There were three other persons present on the attire (the roof top). One of them with a voice resembling that of Amar Nath Singh was shouting to the assailants that all three should be killed. Their gruesome deed finished, the appellants left after covering up Rameshwar Singh with a charddar. On hearing the alarm raised by him several persons including Ram Nath, a servant, Raja Ram Singh and Harish Chandra Singh arrived on the spot.

5. Rameshwar Singh was examined by Dr. Som Sharma, medical officer in charge of Ghazipur dispensary at 10.15 a.m. on August 23, 1965. The report of the doctor showed the existence of injuries on the persons of Rameshwar Singh, seven of which were incised wounds on the head and the neck and the eighth injury was a lacerated one over the dorsal aspect of the second digit of the index finger of the right hand. The injuries were however all simple excepting one incised wound 5"x1"x bone deep, over the mastoid bone region and muscle deep over the rest of the wound on the left side

of the neck in the upper part. According to the doctor the mastoid bone behind the left ear was found cut by the feel of the tip of the finger. Roop Rani had no less than 12 incised wounds on the right parietal bones, right side neck, right side shoulder, right side upper back, right loin, left shoulder, left arm and left thumb. Smt. Bhoori had four incised wounds on the right side back of the head as well as the left side back of the head and left side neck upper part with the result that her occipital bone was cut through and through. The only difference between the injuries on Rameshwar Singh and those on the two ladies lay in this that those on Rameshwar Singh were all on the left side of the head or on the neck which those on the two ladies were on both sides of the head besides out the parts of the body of Roop Rani.

6. On the apprehension that Rameshwar Singh might not survive the effect of the insures Dr. Sharma recorded a declaration made by him at about 10 a.m. on the basis that it might be used as a dying declaration. In that declaration, Rameshwar Singh named all the five persons who were responsible for the attack with phrases and said that some of them were holding their victims down while others were assaulting them with phrases one cubit to length. He also declared that two or three persons were seen on the attire one of them being Amaranth. All the three victims raised a hue and cry. On hearing the alarm several persons of the village arrived on the spot. Thereafter the witness became unconscious.

7. Rameshwar Singh was sent to the District Hospital, Fatehpur for treatment and there the same evening another declaration of his was recorded by the Tehsildar Magistrate at 9.30 p.m. The version given in the said declaration is much to the same effect as the previous one excepting a difference of about an hour in the time of the occurrence and in the weapons alleged to have been used by the assailants. In the second declaration Rameshwar Singh stated that the assailants had unsaid gandasas or kulari. This declaration also included a statement which did not find a place in the previous one that a few days back the accused persons had been heard by him talking among themselves about committing the assault.

8. The topography of the place where the occurrence took place, as given in the evidence of Rameshwar Singh is as follows. The main door of Roop Rani's house faced towards the west. There was another exit door towards the south. The verandah where the crime was perpetrated had a door on the south. The door led to a room which had a door to the south of the room which was found open after the assailants had left. The partition wall which separated the court yard of Roop Rani's house from that of Raghunath Singh was only 4 1/2 feet in height and the easiest means of access to the court yard was by scaling over the wall from Raghunath Singh's house.

9. In his statement before the Sessions Judge Rameshwar Singh stated that five persons had jumped into the court yard of Roop Rani from Raghunath Singh's courtyard. The noise caused was enough to wake him up and notice some persons armed with botanias fitted with pharsas. Rameshwar Singh raised an alarm which woke up the two ladies who also joined him in the alarm. The five accused felled them down on the cots and began to assault them with pharsas. After killing the two ladies and taking Rameshwar Singh to be dead they placed a chaddar on his body and passed out through the southern door of the verandah. After the accused had left Rameshwar Singh raised an alarm again when the servant Ram Nath and Raja Ram followed by Harish Chandra came up. Ram Nath and Raja Ram Singh were sleeping in the eastern room of Roop Rani's house. Rameshwar related the whole incident to them. Ram Nath had a torch in his hand. A report was dictated by Rameshwar Singh which was ultimately taken to the police station. He was taken to Ghazipur police station in a doli where he reached between 8 and 9 in the morning and submitted the written report. In his cross examination, Rameshwar Singh stated that Amar Nath was shouting in a loud voice

from the attire to the effect that all three should be killed and he recognised Amar Math Singh only by his voice. He had fallen into swoon a few minutes after the assault but had not become unconscious. The torch which Ram Nath carried had been placed in the doily and remained with him in the hospital. From there it was given by him to his father with instructions that he should keep it with him.

10. The evidence of Ram Nath, the servant of Rameshwar Singh, was to the effect that on the night of the occurrence he was sleeping in the verandah of a room in the house of Roop Rani along with Raja Ram Singh Chauhan. Hearing a hue and cry from inside the house they both woke up and went towards the main door of the house which was on the western side. As the door was closed and they could not open it, the witness went towards the southern door of the house with an electric torch in his hand. When he was at a distance of 9 to 10 paces from the southern door he saw five persons coming from the khirki (side door) and running towards the east. Hearing his shout Raja Ram also came and witness told Raja Ram the names of the five persons he had seen running away. All of them had pharsas fitted to dandas 1 1/2 cubits in length in their hand. About this time, Harish Chandra and Manbodhan Tiwari also arrived on the spot. Witness and Raja Ram went inside the house and found the two ladies lying dead and Rameshwar badly injured and talking in a feeble voice. He also spoke about the lantern which was burning in the verandah and the daughter of Smt. Bhoori lying by her side besmeared with blood. She had however no injuries on her person and witness took her to the house of Raja Ram. Rameshwar Singh's son who was on the same cot with Roop Rani was also alive although there were injuries on the right side of his head. He put the electric torch on the cot of Rameshwar Singh when he lifted up the child in his lap. During his cross examination his attention was drawn to his statement under Section 184, Cr. P.C. where he had made mention of the presence of Manbodhan Tiwari and Harish Chandra. He did not admit having stated on the former occasion that he had kept the torch at the place from which he had picked up the children or having said that someone had taken it from him at the time of the hue and cry. He was unable to reconcile this with his statement in his examination in chief. But he was positive that he had put the electric torch on the cot of Rameshwar Singh when he had picked up the girl.

11. In his evidence Dr. Som Sharma gave details of the injuries suffered by Rameshwar Singh and said that all of them excepting one were simple. The lacerated wound, according to him, was caused by some blunt weapon such as a lathi. It might also have been caused by the hand being struck violently against the bed frame. It was also possible that this injury was caused while the victim was being assaulted by a kanta or a pharsa and had raised his hand to save himself and the portion of the pharsa which was fitted with a lathi had hit his fingers. He was responsible for having recorded the dying declaration of Rameshwar Singh at about 10 a.m. on the morning of 23rd August. Rameshwar Singh was in full possession of his senses at that time. With regard to the incised injuries his evidence was that one of them alone could have been inflicted with an axe. Two of the other injuries might have been caused by an axe while the others could have been inflicted with a gandasa.

12. The Sessions Judge did not accept the evidence of Ram Nath about his possession of a torch on the night of incident and the explanations given by Ram Nath and Rameshwar Singh for the delay in making it over to the investigating officer. He also found other discrepancies in the deposition of these two witnesses relating to the use of a torch. Discounting the story of the torch the Sessions Judge held that Raja Ram Singh could not have seen any of the assailants running away after the occurrence. After examining the evidence meticulously the Sessions Judge held that the accused Raghunath Singh had a strong motive for committing the murder of the two ladies and Rameshwar Singh. He accepted the evidence with regard to the presence of the lantern in the verandah where

the crimes were committed and was of opinion that Rameshwar Singh had seen the occurrence and recognised at least four of the assailants besides seeing two or three persons on the roof exhorting assailants to murder the victims. He also accepted the version of Rameshwar Singh about the four assailants armed with pharsas having crossed into the courtyard of Roop Rani by scaling over the partition wall causing injuries to the victims which resulted in the death of the two ladies. He convicted and sentenced each of the four appellants to death subject to confirmation by the High Court and holding them guilty of other offences passed sentences on them as already mentioned.

13. The appeals by the appellants and the reference by the Sessions Judge were heard by a Division Bench of the Allahabad High Court consisting of two Judges. One of them upheld the conviction accepting not only the evidence of Rameshwar Singh but also that of Ram Nath whose testimony had been discarded by the Sessions Judge. He examined the discrepancies in the evidence of these witnesses and came to the conclusion that they were not of sufficient gravity to disbelieve them. The conclusions of the learned Judge were accepted by the third Judge who heard the appeals on a difference of opinion between the first two Judges.

14. The argument put forward on behalf of the appellants before the High Court that in view of the injuries inflicted on him Rameshwar Singh could not have seen the assailants was accepted by one of the two learned Judges who first heard the appeals. The plea raised was that an examination of the injuries made it clear that Rameshwar Singh had not moved at all during the attack as all the wounds were on left side of his head whereas in the case of the ladies the wounds were on both sides of the head and neck besides other parts of the body. On this basis it was contended that whereas the ladies had struggled and moved, Rameshwar Singh had been rendered unconscious by the very first blow and had not moved, Rameshwar Singh had been rendered unconscious by the very first blow and had not moved at all.

15. One of the two learned Judges hearing the appeal seems to have been carried away entirely by this argument and according to him the injurious "were a series of parallel cuts, presumably inflicted by an assailant who stop in one position throughout and dealt successive blows on Rameshwar Singh's head and neck, while Rameshwar Singh was lying on his right side". Further,

"The blows must have been dealt with by some heavy sharp instrument, for one of the wounds cut into the astute bone behind the left ear, which the three others pond treated the neck as far as the muscles."

The leaned Judge said :

"the nature of these injuries proves that Rameshwar Singh remained lying on the same position on his bed while the seven blows were being struck at him; and this means that he did not get up and look around, presumably because he was stunned by the very first blow and consequently he could not have had any opportunity of seeing who his assailants were. To my mind this defence suggestion is entirely plausible and completely convincing. It is significant that the other two victims, Roop Rani and Bhoori received injurious both on the right and on the left, showing that they must have struggled and turned while being struck at; bit Rameshwar Singh's injuries are all on the left and all in the same region suggesting that the did not wake up or struggles at all but remained passively lying in one position while the blows were aimed at him."

The learned Judge made comments on the judgment of his colleague and found himself unable to accept his colleague's conclusion that :

"Rameshwar Sing was probably awake and in a position to see and identify his assailants when he away attacked."

According to this Judge :

"..... it would not be at all difficult for any ordinary able-bodied man to climb over 4 1/2 feet wall and get down on the other side without making any noise. The assailants would naturally have gone barefoot and no sound would have been produced when their feet touched at the ground. My learned brother has assumed that they must have climbed up on top of the wall and jumped down from the top; but I see no reason why they should not have lowered themselves gently into the courtyard, holding on to the top of the wall with their hands until their feet reached the ground. Nor do I see any difficulty in their having done this with pharsas in their hands for they could easily rest their pharsas on top of the wall while letting themselves down, or alternatively each of them could have handed his pharsas to one of the others to hold while he crossed the wall. Their object was obviously to take their victims by surprise and they must have taken every persuasion to avoid making the least noise as they entered the courtyard. In the circumstances it seems to me that there is no warrant for presuming that they must have made sufficient noise to cause Rameshwar Singh to wake up from his sleep."

16. With all respect to this learned Judge it seems that his entire judgment is based on a speculative theory in utter disregard of the evidence adduced by Rameshwar Singh which was accepted by the Sessions Judge but rejected merely on the ground that the injuries on the head were confined to one region and appeared to have been inflicted by a person standing in the same position while the victim lay stunned.

17. We find ourselves unable to accept this construction of the crime by this learned Judge. It is quite clear and the learned Judge himself accepted the position..... that the two ladies must have woken up and made some struggle. It cannot be that only one person had come prepared to put all these three persons to death. There must have been quite a number of them and their object certainly was to put all these three persons to death before they could either run away or attract the attention of their neighbors. We see no reason to disbelieve the testimony of Rameshwar Singh that the jumping over the wall by the assailants had roused all three of them from their sleep. If Roop Rani who was sleeping inside the verandah had been roused from sleep by the noise made by the assailants, we see no reason to believe or hold that Rameshwar Singh was not similarly roused. His evidence was that his cot was half within and half outside the verandah and he would be the person nearest to the wall and likely to hear the noise of the scaling over the wall before others. Even in the report to the police made out either at his house or at the police station, he had stated that they had all struggled and had been thrown on their cots by the assailants and wounded by them with their pharsas. It may be that because he was an able-bodied man Rameshwar Singh was held down by more than one person so that he could not move his limbs at all while the ladies were not pinned down to their cots with the same rigidity as Rameshwar Singh. If all the victims had been roused from their sleep and two of them at least unquestionably had struggled, there is no reason to hold that the most able-bodied of them should not have done so and the mere theory that all the injuries appeared to have been caused by a person standing in one position inflicting the wounds one after

the other to Rameshwar Singh when he was stunned by the first blow cannot be accepted discarding Rameshwar Singh's testimony that he had seen these persons scaling over the wall and attacking them.

18. We are further not impressed by the argument that the delay, if any, in lodging the report to the police was sufficiently long to afford an opportunity of inventing a story about the appellants having been the assailants. It was argued that Rameshwar Singh had seen nothing and that taking advantage of the lapse of about eight hours between the time of the occurrence and the report to the police all the enemies of Roop Rani and Rameshwar Singh had been mentioned in the said report. In this connection one must remember that the distance between the place of occurrence and the police station was ten menials and the occurrence had taken place at about midnight and it was not likely that Rameshwar Singh would be taken to the police station much before dawn. Rameshwar Singh's would although he was in full possession of his senses on the 23rd August were of such a serious nature that his statement was recorded twice to serve as dying declarations in case of his death. These declarations are not admissible under Section 32 of the Evidence Act but they were used to contradict the testimony of Rameshwar Singh with regard to certain particulars. It is difficult to believe that Rameshwar Singh did not appreciate that he might not survive the injuries and we find ourselves unable to accept the suggestion that he had invented the story of the four appellants along with others having scaled over the wall and making the murderous attack between midnight of the 22nd August and 8 O'clock on the morning of 23rd August when he himself had seen nothing. We see no reason to believe that Rameshwar Singh had been rendered unconscious by the very first blow but had regained consciousness to be able to raise an alarm very soon after the assailants had made good their escape.

19. As we have already noted the Sessions Judge did not accept the testimony of Ram Nath and the learned Judge of the High Court who was in favour of the acquittal of the appellants took the same view. But two other learned judges of the High Court believed Ram Nath's testimony in substance and we see no reason to come to a different finding. Both two other learned Judge of the High Court believed Ram Nath's testimony in substance and we see no reason to come to a different finding. Both these Judges accepted Ram Nath's version of his possession of the torch as also the explanation about the delay in handing over the same to the police. It is significant to note that Ram Nath had mentioned his possession of the torch as soon as the investigation had started and we see no reason to disbelieve Rameshwar Singh's testimony that he had handed over the torch to his father at the hospital Ram Nath's presence at the place of occurrence is not disputed but what is suggested is that in the absence of a torch he could not have seen the assailants at about midnight on the night of 22nd August, 1965 when the night was cloudy and there was no moon-light by which the features of the assailants could be distinguished. A reference to the almanac shows that the moon did not rise on that night until after 1 a.m. but the absence of moon light is immaterial in view of the finding that Ram Nath had used a torch which revealed the identity of the assailants.

20. Quite apart from the testimony of Ram Nath about the identity of the assailants who were noticed excepting with pharsas in their hands, we see no reason to come to any finding other than that reached by the learned Sessions Judge who in spite of the inaccuracies and minor contradictions in the testimony of Rameshwar Singh before the Court and his privations declarations found the same to be acceptable in substance. If the version given by Rameshwar Singh about the assault on him and the two ladies by the appellants be accepted, the highly speculative theory of Rameshwar Singh having been stunned by the first blow in his sleep and offering no resistance cannot but be rejected. We seldom come across a case in which some inaccuracies do not creep in the statements of eye witnesses or where there is no conflict of testimony between them when there is more than

one, but the contradictions and inaccuracies must be sufficient in nature to cast doubts on the substantial parts thereof. In the absence of cognate grounds or compelling circumstances we find ourselves unable to come to a finding different from that reached by three out of the four Judges who tried the case and heard the appeals. Only one learned Judge based his conclusion as to acquittal on a theory advanced in the High Court. It may be noted that no suggestion had been made to Dr. Sharma to the effect that the only injury received by Rameshwar Singh which was not simple in nature must have been caused by a blow which rendered him totally unconscious and made it impossible for him to notice anything. No such suggestion was even made to Rameshwar Singh in the fairly lengthy cross examinations on behalf of the different accused before the Sessions Judge. That a lantern was found in the verandah admits of no doubt or dispute. The presence of it was mentioned in the first information report; it was found by the police officers who started the investigation immediately thereafter and it was mentioned in the evidence of Rameshwar Singh and Ram Nath. The presence of a lighted lantern is also supported by the fact that the victims were not only in fear of an attack from Raghunath Singh and his party but there were two very young children sleeping on the cots who might have required attention at night.

21. The rejection of Rameshwar Singh's testimony with regard to the presence of Amar Nath Singh or of his version that the first information report was dictated at his house while the Sessions Judge found that it was laid at the police station or the comment of the Sessions Judge that the investigation in the case was not above board or the variance about the time of the occurrence as between 11 and 12 O'clock in the first information report and between 10 and 11 O'clock as given in one of the so-called dying declarations or of the disparity in the statements about the exact nature of the weapons used, whether they were all pharsas or whether some of them were gandasas, are not, in our opinion, matters sufficient to discredit the main version of Rameshwar Singh with regard to the commission of the crimes by the appellants.

22. In the result the appeal is dismissed and the conviction and sentences upheld.

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