

The State of Rajasthan

Vs

Mukh Ram and Others

Criminal Appeal No. 75 of 1968

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

18.04.1969

JUDGMENT

SIKRI, J. -

1. The Court respondents in this appeal by special leave were convicted by the Additional Sessions Judge, Ganganagar, of the murder of Kunjbehari, under Section 302/149, I.P.C., under Section 148, I.P.C. and under Section 364, I.P.C.
2. The High Court on appeal set aside the conviction of the respondents under Section 302 read with Section 149, under Section 48, and under Section 364, but convicted them under Section 147, I. P.C. and under Section 367, I.P.C. Sentence of one year's rigorous imprisonment was awarded to each of them under Section 147, and sentence of two years rigorous imprisonment under Section 367. The sentences were directed to run concurrently.
3. This is an appeal by special leave against a judgment of acquittal by the High Court and the State, in order to succeed, must show that the conclusion arrived at by the High Court is plainly unjustified and no court could possibly come to the conclusion which the High Court arrived at.
4. We have been taken through the evidence and the judgments of the learned Additional Sessions Judge and the High Court, but the State has not been able to show that the High Court's conclusion is plainly unsustainable.
5. The relevant facts are these. The occurrence took place on March 15, 1965, at about 9.30/10 p. m. Mukh Ram, respondent, filed a First Information Report at Police Station, Sadulshahr at about 2.15 a. m. on March 16, 1965. Mukh Ram stated that he and his cousin brother had differences with Kunjbehari, deceased; at about 9.30 p. m. his brother Maniram, Amaria, his cousin, and Lalchand Chamar were taking wine in front of his house; at that time Surja s/o Puran Singh, resident of Kishanpura, and Kunjbehari arrived shouting while under the influence of wine; Kishanpura had a 12 bore gun; Amaria and Kunjbehari grappled with each other; at this he and Hazari rushed there; Maniram, Amaria and he caught hold of Kunjbehari and Lalchand snatched away the gun Kunjbehari; the gun was delivered to his mother Gulli. Mukhram then stated that he, Amaria, Maniram, Lalchand and hazari took Kunjbehari to his house beating; Lalchand and Maniram each gave a Lathi blow on the thigh and he and Amaria struck him on the buttocks and gave several Danda blows; Surja had run away; Kunjbehari's hands and feet were tied with strings and Kunjbehari was made to lie flat on the ground near the Tandur in his house; after sometime Surja came running near Dungar Ram's house and said 'Mangla's son, come outside'; at this Amaria came out of his house and had hardly walked about 20 Kadams (9 paces) towards Surja when Surja

pointed a pistol towards Amaria and fired at him from a distance of about 5-6 Kadams (paces) i.e., fired the bullet. Later he stated :

"Immediately after knowing that Amaria had died Hazari brought out a Kassi from his house and to Kunjbehari near 'tandur' in my house and struck Kunjbehari three Kassi blows on the neck from behind."

He further stated that he and Maniram untied Kunjbehari's hands and feet and threw the string towards the house of Amaria and dragged the dead body and left it near the house of Doongar Ram.

6. The police arrested Mukh Ram and after investigation submitted a challan against the four respondents. At the trial a number of witnesses were produced but we need only notice the evidence of two witnesses. The prosecution put fourth Surjan Singh as an eye-witness. His story was that when he and Kunjbehari were going to the house of Gutu, alongwith him, he saw the respondents and Amaria, deceased, taking wine; Mukhram was armed with gun and the four remaining were armed with Lathis, all those five persons caught hold of Kunjbehari and carried him beating to the house of Maniram. He described what happened after this thus :

"I and Gutu followed them up to their outer gate. Guto came back from there. Maniram and Amru tied the hands of Kunjbehari with a stump post. After that all the five persons began to beat Kunjbehari with their weapons. Hazari had a Lathi on that occasion with him. After some time he threw away the Lathi and picked up a Kassi and dealt three blows with it on the neck of Kunjbehari from front side. I also asked the accused not to kill him..... Smt. Guli mother of Mukhram who was present there asked his sons to murder me also. At this I ran away from there..... I went to my house. I remained at my house and did not go to the Police Station to lodge the report out of fear of the accused."

7. When may mention that he was prosecuted in another case for the murder of Amaria on the facts alleged in the statement of Mukh Ram before the police. Before the police he had admitted that he and Gutu had run away and then he having brought one pistol and two cartidges fired at Amaria when Amaria ran after him.

8. The High Court disbelieved the statement of Surjan Singh that he remained standing outside the house to watch what was happening to Kunjbehari, without being challenged by the accused. The High Court was of the view that it was unbelievable that Surjan Singh would be allowed to remain outside the house and become an eye-witness to the murder of Kunjbehari. Both the Courts having found that Surjan Singh was not an eye-witness, we must proceed on the basis that there is no direct evidence as to who killed Kunjbehari.

9. The next witness is Sheokaran alias Gutu, a boy of 9, who is a nephew of Kunjbehari. He deposed to the five persons drinking in the lane and catching hold of Kunjbehari and carrying him to the house of Mani Ram. Admittedly he did not see what happened inside the house of Mani Ram. He confronted with his police statement wherein he had stated that Kunjbehari was armed with a gun.

10. The learned Additional Sessions Judge believed the testimony of this boy inspite of some shortcomings, and the High Court was not prepared to take a different view of his evidence. But as already pointed out, the boy does not claim to be a witness to the murder of Kunjbehari. After reviewing the evidence the High Court come to the following conclusion :

"..... the four appellants and Amru had a quarrel with Kunj Behari and Surja when they passed near their houses. Kunj Behari was carried by the accused into the house of Mukhram. He was also beaten by the accused while being so carried. It appears that after seeing Kunj Behari being taken inside the house of Mukhram the witnesses ran away and Surja Ram came back some time after..... We are therefore of the view that Kunjbehari after he was taken inside the house was tied with a rope to a wooden post near the wall of the house. The four accused and Amariya, therefore, became members of an unlawful assembly as soon as they grappled with Kunj Behari. Then they started beating him and took him in the house of Mukhram beating..... But to impute the motive for murder to the accused or to hold that Kunj Behari was being carried inside their house in order that he might be so disposed of as to be put in danger of being murdered was going too far even under the circumstances".

Then the High Court came to the conclusion that it was not a case in which it should throw the responsibility of committing the murder of Kunj Behari constructively on the shoulders of any other person except the perpetrator of the crime, and there was no direct evidence or circumstantial evidence to show beyond doubt that it was Hazari who killed Kunj Behari by an axe. The High Court also came to the conclusion that it was possible that Hazari killed Kunj Behari after Amaria had been killed.

11. The learned counsel for the State says that the respondents having taken Kunj Behari inside the house of Mani Ram the only object with which they could have taken him inside was to kill him in the house so that no person may actually witness the murder. The learned counsel for the respondents on the other hand contends that if the original intention was to murder Kunj Behari they would have done so with the gun which, according to the statement of Sheokaran before the police, Mukh Ram had in his hand. He also points out that the injuries on Kunj Behari show that there was no intention to kill him but only to chastise him. The medical evidence shows that Kunj Behari had a number of contusions on the arms, the thighs and the legs, but none on his head or face. It is the injury which was an incised wound on the neck of Kunj Behari, which had been attributed to Hazari, that really killed him.

12. We are not convinced that the High Court erred in holding that it was not established that the object of the respondents and Amaria, deceased, was to commit the murder of Kunj Behari or to kidnap Kunj Behari in order that he might be so disposed of as to be put in danger of being murdered.

13. In the result the appeal fails and is dismissed.

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